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AN ANALYSIS OF COMPULSORY ARBITRATION IN A DEVELOPING COUNTRY THE CASE OF - TRINIDAD AND TOBAGO

by

© DONALD R. WALKER

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE

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THE UNIVERSITY OF ALBERTA

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled AN ANALYSIS OF COMPULSORY ARBITRATION IN A DEVELOPING COUNTRY THE CASE OF - TRINIDAD AND TOBAGO

submitted by Donald Rudolph Walker

in partial fulfilment of the requirements for the degree of Master of Arts

John Forster
Supervisor

Date Aug. 1/73

DEDICATED TO

Sis and Gene

I can never repay you, nor ever
thank you enough.

ABSTRACT

This study has focused its attention on a method used for resolving, controlling and eliminating industrial strife — compulsory arbitration. Because under compulsory arbitration, a decrease in strikes is expected, an attempt was made to explain the phenomenon of increasing industrial stoppages witnessed in Trinidad and Tobago. Two other countries, Australia and New Zealand, having a longer history with the same type of legislation, were also examined.

Using a model developed from conflict theory, it was found that a probable explanation for increasing strike activity is the legislation of compulsory arbitration itself, seeing that its aims deny the necessity of conflict in society. The model was divided into aspects - mechanistic and organic. The former sought to explain automatic changes that would occur in unions under compulsory arbitration, and how these changes influenced strike activity; the latter sought to explain the difficulties which would result in implementing compulsory arbitration.

It was found that the countries examined, all followed the model in their pattern of strike activity. Although in the case of New Zealand and Australia, strike statistics fluctuated somewhat, yet the pattern in strike activity is definitely a general increase

in strikes. Only in Trinidad and Tobago, has there been a sustained upward trend after the initial decrease in industrial stoppages.

One major finding with respect to the mechanistic model was the tendency for unions to remain weak if they received too much protection under compulsory arbitration legislation. Such a situation developed in New Zealand with provision for compulsory unionism. Union leaders assured of membership, became lax and did very little to strengthen the organizational ability of their unions. With the abolition of compulsory unionism, a new attitude developed. Consequently, there has been increased strength as shown in the greater willingness on the part of these unions to strike.

Trinidad appeared to be an idela type for the application of this model. Because of the different initial conditions which ushered in its legoslation, unions from the outset concentrated on ways and means of getting rid of the arbitration machinery. The working of this legislation has only served to exacerbate its contradictions. As a result, Trinidad has taken a shorter time to show the predicted increase in strike activity, than either Australia or New Zealand.

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There is not sufficient time and space to mention all those I believe have made some contribution to this work. I do hope by listing a few names, all you lovely people would realize it is a sample and not the population of those who helped me.

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CHAPTER 1

NATURE OF THE PROBLEM

A report in "Current Information" in the International Labour Review (December, 1965) states that,

> ...In March, 1965 the Parliament of Trinidad and Tobago passed the Industrial Stabilization Act, providing for the compulsory recognition by employers of trade unions and organizations representative of a majority of workers, for the settlement of trade disputes, for the regulation of prices of commodities, for the conclusion of industrial agreements and for the regulation of strikes and lockouts.

A central feature of the Act was to prevent work stoppages so that a favorable climate for investment may be established. The Minister of Labour summarizes the reasons for the Bill's introduction by stating that,

> ...in post-independence years, we experienced the results of industrial conflict and the entire community was affected. In fact, what was becoming a world problem emerged here - a rapid deterioration in the Industrial Relations climate... It was therefore in an atmosphere of turbulence on the labour scene that the Industrial Stabilization Act, 1965 was introduced. (Trinidad Express, p. 4, Aug. 31, 1972)

The turbulence of which the Minister speaks can be viewed in Table 1.

TABLE 1

Disputes for Trinidad & Tobago*

D/C = Number of disputes
W/T = Workers involved
D/J = Working days lost

-	1961	1962	1963	1964	1965	1966**	1967	1968	1969	1970	1971
D/C	35	75	48	44	4	1	8	9	9	64	70
W/T	12,322	15,962	17,799	8,097	7,160	-	-	-	-	-	-
D/J	45,105	164,657	204,971	95,906	88,051	-	-	-	-	-	-

* Yearbook of Labour Statistics 1971, pp. 742-743

** Figures appearing from 1966 onwards are taken from a report by Mr. T. Cross, Chief Labour Officer at the Ministry of Labour, Trinidad & Tobago, appearing in the Trinidad Express (p. 3. Aug. 31, 1972).

There are two interesting features of this table relevant to the definition of the problem. First, with the exception of 1962, every year leading up to the introduction of compulsory arbitration saw a decrease in the number of disputes. A similar trend is observed for workers involved and also working days lost. Second, with the introduction of the law to curb industrial disputes, every succeeding year has seen an increase in industrial disputes. If one is to measure the success of the legislation by its effectiveness in curbing strikes, then the conclusion using the most recent fugures of 1970 and 1971 is that there have been more strikes in a period when they have been outlawed, than when they were not.

The author attempts to examine certain factors which have contributed to the apparent failure of compulsory arbitration in Trinidad and Tobago. This is done by comparing Trinidad with two other countries - Australia and New Zealand, which have longer history with compulsory arbitration legislation and also seem to be undergoing great difficulty.

Howells (1972) demonstrated that in New Zealand the increase in strike activity definitely questions the efficacy of having compulsory arbitration. He states that,

> ...Comparing the years 1952 to 1959 with the sixties, the number of stoppages and workers involved have doubled, and the number of working days lost has more than tripled. If, instead, a similar comparison is made with the last three years of the period, the differences are even more pronounced. There has

> been an appreciable increase in the level of strike activity, so much so that the idea "that legislation has an essential and positive role to play in the improvement of industrial relations"[5] has to be handled with considerable caution. (Howells:1972:526)

Yerbury and Isaac (1971) after examining the Australian Industrial Relations system found that "there has been a steady increase in the number of strikes over the last three years - 508, 867 and 1488 in 1960, 1965 and 1969 respectively"(Ibid:447).

Generally, then there has been an increase in strike activity in the countries that one will least expect it, seeing that they provide for compulsory arbitration. The author's thesis is that in attempting to explain the observed phenomenon of increasing strike activity in these systems, one has to focus on the industrial relations system, and specifically the provision for compulsory arbitration. The claim of this study, is that increasing strike activity can be explained by the compulsory arbitration legislation. Consequently one has to take into account the actors in the system as well as the environment in which it must function.

If the industrial relations systems of Australia and New Zealand are examined together with the system of Trinidad and Tobago, one can identify certain actors - Government, Union , Management, Public and particular environmental factors - Political, Social and Economic which are necessary for the functioning of the Industrial Relations system.

Several authors (Walker, 1959; Churchward, 1960; Foenander, 1962; O'Dea, 1965) have shown the interplay of these factors - environment and actors - which made unions welcome the introduction of compulsory arbitration in New Zealand and Australia. If one were to begin in 1850, there was the Gold Rush bringing a great influx of immigrants from Britain. These had a concept of social justice which led them to be more industrially militant in seeking their demands.

In the 1890's a series of big strikes was defeated by the employers with the help of the Government. The Economy was not buoyant to furnish many workers with jobs. Unions were at a definite disadvantage in the power structure. Consequently when compulsory arbitration was introduced, unions saw great benefits in the legislation. In a report published by the Brotherhood of Railroad Trainmen (p. 44) the author states that,

> ...there are a number of reasons for the Australian acceptance of compulsory arbitration. First, the union movement in Australia achieved industrial power earlier than in most nations. As a result, workers did not need the strike weapon in order to gain recognition as did unions in the United States. Second, Australian labor has participated in the political arena since the early days of the nation. Thus the union movement is able to influence the policies and objectives of government action, including government arbitration. And, third, the Australians are generally considered to be a non-revolutionary, pragmatic people whose natural tendency would be toward a system which resolved conflict in an orderly fashion without the necessity of a work stoppage. (1965)

What is interesting in this account is the role the union can play regarding the success of compulsory arbitration legislation. In this study, unions will therefore be a main object of our attention to account for their role in the failure of compulsory arbitration. The choice of management, government and the public as actors in the Industrial Relations system, is also justified by their potential to contribute to the success or failure of compulsory arbitration. Seeing that arbitration is usually introduced by the Government, of primary importance is the timing of the introduction of the legislation and whether or not adequate machinery is provided to ensure its success.

The public becomes important because one actor (the Government) in the system is supposedly the embodiment of the public's interest. If therefore, the public is clamoring for action to curb apparent chaos in industrial relations then one can expect greater support for legislation such as compulsory arbitration, than if the public was openly in favour of retaining collective bargaining.

Together with these actors, environmental factors will also be considered as it is deemed they play a very important part in the outcome of any particular legislation. It is therefore claimed, that the type of symbiotic relationship between actors and environment is what will hasten or retard the increase in strike

activity under compulsory arbitration. Indeed, the environment sets certain conditions necessary for justifying the introduction of compulsory arbitration.

Throughout this thesis, our attention would be centered on compulsory arbitration and how it accounts for increased strike activity. The author believes that because the aim of compulsory arbitration is the elimination of industrial conflict - and hence strikes - failure is built into the legislation. However, it is felt, that the rate at which arbitration would be seen as a failure depends on interaction between the legislation and the environment. Therefore, in implementing compulsory arbitration, there are basic features inherent in the legislation which oppose reality, and consequently itself. These features can be termed inherent contradictions.

A model has been designed which seeks to explain increasing strikes under compulsory arbitration.

In Chapter ll the author defines compulsory arbitration giving different types of arbitration, reasons for its introduction and the pros and cons of compulsory arbitration. Seeing that the focus is on compulsory arbitration, a model for examining the working of this legislation is given in Chapter lll. Basically, this model shows that any examination of compulsory arbitration can be carried out in several stages.

The stages account for the fact that at some time after the introduction of compulsory arbitration, there is a decrease in the conflict which brought it about. However this situation does not last for long and consequently after a time the situation returns to the initial state of conflict. Conflict is here defined as strike activity.

In Chapter IV, using this model an attempt is made to explain the increasing strike activity in Australia and New Zealand.

In Chapter V, Trinidad and Tobago is examined using the same model. Special attention is paid to the parties involved in the industrial relations system, and their contribution to the improper functioning of compulsory arbitration. In addition, the author suggests that compulsory arbitration may have been doomed from the beginning, because the environment in Trinidad and Tobago was quite different from Australia and New Zealand's when they introduced compulsory arbitration. Indeed even at the time it was brought into Trinidad, Australia and New Zealand were not experiencing any great success with the machinery.

Chapter VI deals with the conclusions and implications of the study.

Limitations of Study

The notion of making one's theoretical position clear in

the examination of any social phenomenon is rather debatable in the social sciences. It is claimed that in order that the science remain pure, the investigator ought to display value-neutrality. Some writers have pointed out the difficulty in retaining such neutrality, especially as values creep into (1) the selection of the problems (2) the content of the conclusions (3) the choice of what constitutes social facts and (4) the assessment of evidence.

Although there is truth in such statements, yet as a social scientist one has to concede that so long as objectivity is maintained in the research, there is nothing wrong with values influencing one's research. Indeed, according to Hartung (1948), the original meaning of objectivity was that "one should be free from pressures to arrive at data or conclusions". Consequently as long as that freedom is maintained value-neutrality exists.

Two prevailing attitudes which seem to condition the social scientist's disposition to analysing data with a certain degree of detachment are (1) the claim that social science ought to approximate in every way the natural and physical sciences; and (2) the belief that the empirical method can most certainly be applied to social facts and yield findings with equal precision to those in the natural and physical sciences. These attitudes in definite ways have led the investigator into a sense of purposelessness still believing that all science does is to state "what will happen if certain things are

done." (Hartung:1948)

This thesis will show the limitations which the researcher faces in examining social phenomena. Popper (1959) has stated that the very nature of the social sciences prevents the manipulation of the phenomena which would enable prediction.

The conclusion which may be arrived at from the foregoing discussion on the social scientist is that there is nothing to prove that social science is indeed a science. Consequently it seems necessary that the scientist be not overshadowed with the dictates of science and forget his social responsibility. This fact is especially noteworthy as many a social scientist forgets the nature of his enterprise, wishfully hopes to make a startling discovery to add to the pool of academic contributions and becomes frustrated when he does not. The mere fact that "ceteris paribus" always has to be used, stultifies the growth of the social science. There is always the problem of defining the conditions under which certain things "ought" to happen if man behaves rationally. This factor makes the venture interesting but is not the material from which laws akin to those in the physical sciences are construed. It is necessary that the public be informed about the nature of the social sciences and its role in mapping indicators of possible implications for certain facets of reality. Nevertheless, because systems are usually dynamic, the pressure for results from the social scientist makes the defining of limits more difficult. There is therefore always a

crisis in attempting to define the necessary and sufficient conditions for the success or failure of any policy of government.

CHAPTER II

WHAT IS COMPULSORY ARBITRATION

Compulsory Arbitration is a method used in labour-management disputes to resolve industrial conflict. Invariably, it involves a third party, usually the Government, setting up the machinery by which it operates.

Northrup (1966) points out that with compulsory settlement of labour disputes as the goal, the issues must be determined by someone; which means compulsory arbitration. With compulsory arbitration, usually wages, hours of work and general working conditions are determined by the third party.

Compulsory arbitration usually has some procedure set out for "selecting the arbitrator (either on an ad-hoc, or case-by-case basis, or establishment of a permanent arbitrator or arbitration board), and usually also provides methods of enforcement of awards and penalties for refusal to abide by them. Many statutes also attempt to set forth criteria or standards to guide arbitral decisions." (Ibid:1966) So it is quite possible that the third party may be a permanent body as in Trinidad and Tobago, New Zealand and Australia, or it may be ad-hoc - being appointed to solve each dispute as it arises.

The main feature of compulsory arbitration is its requirement that no strikes or lockouts should take place during the life of a contract. Indeed, its aim extends into eliminating strikes completely. This factor is understandable, when one examines how and when compulsory arbitration has been introduced over the years.

Roberts (1967) believes that demand for compulsory arbitration has followed a periodic cyclic trend. To him,

> ...they go back to the 1880's and have reached various high points around 1900, the 1920's the middle 1940's the early 1950's and the early 1960's. The cycles have certain common denominators, including periods of strong union organizational drives, high strike activity, and periods of reasonably high prices and the subsequent action by workers for wage adjustments to take care of these needs. For example, the post World War II reaction when strikes were largely motivated by an attempt to make up for the cutbacks, overtime war bonuses and reasonably loose incentive systems. Public opinion during these periods is generally "there ought to be a law." (Roberts:1967:3)

Northrup agrees with him in that he pointed out that during the war, the fear of interruption of the supplies, facilitated the establishment of compulsory arbitration machinery. Interruption of the supplies to the troops was not going to be tolerated. This policy was abandoned after the war and has been cited as a contribution to the rash of strikes in that era.

In 1963, the United States instituted the first federal peacetime compulsory arbitration act when they passed the Railroad Arbitration

Law. Like other compulsory labour laws before, it was supported by management and rejected by the unions . It was

> ...the threat of a nationwide rail strike, the failure of the fact finding procedure of the Railway Labor Act either to preserve collective bargaining or to evolve a substitute framework for settlement, and the refusal of the President to permit a nationwide railway strike resulted in 1963 in the first federal peacetime compulsory arbitration act, outside of the limited area of representation, . . (Northrup:1966:12)

Northrup's (1966:14) conclusions on the reasons for the introduction of compulsory arbitration are -

" (1) To insure uninterrupted production in wartime.

(2) To further the economic or social aims on policies of government;

(3) To curtail strikes and/or union power in general or in crucial industries;

(4) To enhance union growth or power;

(5) To support collective bargaining."

As previously mentioned, not all compulsory arbitration laws have their beginning preceded by war crises. In the case of Australia, New Zealand and the Phillipines, arbitration legislation was introduced to protect the unions and prevent strikes.

As stated by Calderon (1960:2) the introduction of compulsory arbitration was a "deliberate response of the policy-makers to the social scene characterised by acute agrarian and industrial unrest of disturbing proportions." Strong measures were needed to curb strikes

and to improve the deteriorating state of collective bargaining in the Phillipines, hence the introduction of compulsory arbitration. Without elaborating on New Zealand's and Australia's state of industrial relations, a similar reason was in force for introducing compulsory arbitration. It has been shown in the case of Australia and New Zealand that, compulsory arbitration has definitely benefited the unions.

The Pros and Cons of Compulsory Arbitration (1965:43) adduced in support of the effect of compulsory arbitration in Australia that,

> ...Since the adoption of compulsory arbitration, the union movement in Australia has grown much stronger than the union movement in the United States. Whereas, only 33% of American non-agricultural workers are members of unions, 57% of Australian workers are unionised.

On the other hand, the unions in the Phillipines were not as successful in their organizational drives as one might have expected under compulsory arbitration. This may be accounted for by a lack of protection of unions who wanted to organize workers in the various industries. Unions grew, but many were company unions. Calderon (1960:6) found that failure of compulsory arbitration to provide protection for unions proved detrimental to its existence. To him, because "there was no law punishing or outlawing the organization of company unions or prohibiting employers or landlords from interfering with, or coercing themselves for collective bargaining purposes," (Ibid:6) compulsory arbitration was doomed to fail.

From the foregoing one comes to realize that in accounting for compulsory arbitration, one has to look at the conditions which supposedly warrant its introduction. In some cases, keeping in mind the rather tumultous history of the labour movement, the legislation has been designed to help unions and they have welcomed it; in others, it has been to curb the "abuse" of the strike weapon of the union, and according to Laski (1949:22) enhance the power of management.

Another feature of compulsory arbitration is that it is concerned mainly with the settlement of interest disputes rather than rights disputes (de Vyver:1963:34). Interest disputes involve the making of an agreement whereas rights disputes are applicable to grievances or the interpretation of an agreement. Benewitz (1963:791) concurs with previous authors who maintain that both types of disputes lend themselves to much abuse. However he believes that "it is still true that the overwhelming proportion of all grievances are settled by the parties ... and if it is proper to extend this experience to 'interest' or new-contract arbitration, then we might conclude that the compulsory arbitration process will not be misused."

The author points out that there are several differences between rights disputes and interest disputes. In the former no party loses its bargaining advantage by concessions. This is so because each grievance is considered separately. In grievance disputes, there is always a body of precedent that can be appealed to. Under compulsory

arbitration of interest disputes there is no such precedent. Consequently there is more likely to be an impasse in interest disputes - each party maintaining that since there is no precedent his claim is tenable - than in a rights dispute. With compulsory arbitration in interest disputes, every concession appears as a relinquishing of one's advantage. This occurs because "compulsory arbitration arises after the failure of negotiations, where no contract or precedent creates any probability of one settlement rather than another. Instead, in the usual case, each party makes a large set of demands which mask his real goals... To make free concessions is to give away bargaining advantage." (Benewitz:1963:791). It is very important to note that arbitration can concern itself with both areas.

Forms of Arbitration

Having examined what compulsory arbitration sets out to accomplish, one can look at the different forms of arbitration. Roberts (1967:8) classifies them as -

(1) Voluntary arbitration

(2) Compulsory arbitration

(3) Obligatory arbitration

(4) Arbitration under duress.

With voluntary arbitration, the parties - labour and management - voluntarily agree to submit a dispute to a third party for a "final and binding decision." With obligatory arbitration, which one can view as

a variant of voluntary arbitration, the parties agree in their contract that if an issue arises during the life of a contract, they will submit it to binding arbitration. This type of arbitration can be only considered compulsory, if one thinks that honoring an agreement is compulsion. Compulsory arbitration has already been discussed. Arbitration under duress refers to pressure by Governments for the parties to submit to arbitration.

Phelps (1964:82) has attempted to show that compulsory arbitration has many different variants. If one interprets him correctly, the claim can be made that he sees compulsory arbitration as including parts of the volitional aspect of voluntary arbitration, obligatory arbitration and arbitration under duress. Because as he says, arbitration may be compulsory in every case; it may be at the option of either party or of a public authority, "there may be restrictions placed on the industries and disputes it applies to; the compulsion may be absolute or partial - that is recommendatory." He continues,

> ...the arbitrators may be adhoc, permanent tripartite, or public member only; they may be selected by the parties or appointed by public or private authority; there may be statutory guidelines or not; the issues to be put to arbitration may be inclusive or selective; ...arbitration may be combined with delay (cooling off) or mediation or both. Any combination is possible... (Ibid:82)

Although the author does make a case by pointing out the shades of differences that one can find in compulsory arbitration, the present

author maintains that there are significant similarities between all forms of compulsory arbitration to warrant one classification. For this purpose, one may regard the following discussion on the differences between voluntary arbitration and compulsory arbitration as a means of showing the similarities in compulsory arbitration. Another way of viewing the discussion is from an ideal-type perspective. It is hoped that this formulation of the differences between voluntary and compulsory arbitration helps the readers in understanding the essentials of compulsory arbitration system.

Several authors (Roberts:1967; Brotherhood of Railroad Trainman:1965; Braum:1955; Northrup:1966) have attempted to state differences that exist between compulsory arbitration and voluntary arbitration. The main reason for centering on this area, is to give some insight into the features of compulsory arbitration.

In compulsory arbitration as opposed to voluntary arbitration, the parties are forced "to submit to final and binding decision" under the watchful eyes of the government. Whereas in voluntary arbitration, the parties may choose their arbitrator(s) - people in whom they have confidence - this freedom is disallowed under compulsory arbitration. With voluntary arbitration the parties select the issues that they will submit to the arbitrator. In compulsory arbitration, the arbitrator "decides the issues and may or may not pay much attention to what the parties want him to hear."

(Roberts:1967:7). In voluntary arbitration, the parties have some input with respect to the criteria that should be used in the issue. In compulsory arbitration "the arbitrator is free to make his own determinations as to the criteria to be applied to a particular dispute." (Ibid:7). In voluntary arbitration usually the decision handed down is accepted by the parties. No such certainty is present under compulsory arbitration.

Pros and Cons of Compulsory Arbitration

With the number of countries that have adopted some form of compulsory arbitration, there seems to be a case that can be made for it. However because it is beset by so many problems, there is increasing need to add to the vast debate of both the protagonists and antagonists of this system of resolving industrial conflict.

Orme Phelps (1964:81) adds to the polemical debates through his support of compulsory arbitration. To him, man lives in a society where most things are compulsorily arbitrated. The whole system of jurisprudence...

> ... relies on the idea that anyone with a grievance is able to compel an antagonist to meet him peaceably at a public hearing where after argument, a binding third-party settlement is handed down. No one apologizes for this; more often than not the courts are referred to as protectors of liberties, and defenders of freedom. The unanimity with which it has been held that labor disputes must be exempted from this process is remarkable in itself. (Ibid. 81)

Phelps (1964) maintains that much of the reaction to compulsory arbitration is based on "sweeping generalizations or haphazard analogies."

Another author (Schwartz:1960:195) maintains that,

> ... Compulsory arbitration means the end of real and free collective bargaining, whenever it is applied. Parties who know that their agreement will ultimately be decided for them if they fail to reach an agreement themselves will in fact make no bona fide attempt to agree.

No attempt will here be made to evaluate much of what has been said for and against compulsory arbitration. The literature is fraught with authors who have discussed the subject (Oswald:1965; Phelps: 1965; Benge:1962; de Vyver:1963; Schwartz:1960; Seinsheimer:1971; Benewitz:1963; Raffaele:1963; Calderon:1960; Northrup:1966; Roberts:1967; Braum:1955; Tsong:1972; Jines:1972;). The list is inexhaustible. I would therefore attempt to enumerate the case on both sides.

Government usually justifies introduction of compulsory arbitration by appealing to the need to protect the public's interest. Raffaele (1963) has questioned this basic premise that the government is in any better position to defend the public interest than some other group. Indeed, the claim may be made that in seeking to protect the public's interest, it is truly protecting its own. The reasoning used is that the government is more informed than anyone else about what is good for the people. From this notion of the welfare of the people,

a short step is made to the need for protecting the public.

It is said that without compulsory arbitration one runs the risk of paralyzing the economy if labour and management are allowed to get out of hand. Indeed, more can be gained both for management and unions if they substitute the use of their power, in cases where they might have exercised such use, for binding arbitration.

In any case, the decision of "an important public person" (Roberts:1967) is better than the use of economic force or coercion. This method ensures protection of "the freedom of the community by suppression of the abuses of individuals and minorities;" substitutes the rule of law and equity against compulsory chaos (strikes and lockouts). (Ibid:1967)

It is said that collective bargaining has failed and therefore it behoves governments to try some different industrial relations tool - compulsory arbitration. This should meet with everyone's agreement seeing that labour disputes are like all other disputes and should have a set pattern for dealing with them.

During the war the experiment with compulsory arbitration was fairly successful and therefore makes claim for emulation. Compulsory arbitration, it is stated, assures everyone the freedom that is necessary in a democratic society. As Roberts (1967:26) puts it ... "Freedom is only established and maintained by restraints on abuses of freedom." Finally the protagonists point to other areas

that have used compulsory arbitration and recommend, that it is befitting that the same system be also used in labour-management relations.

The arguments against compulsory arbitration usually center on the inconsistency of compulsory arbitration with the democratic system, and also the breakdown of collective bargaining machinery when once compulsory arbitration has been instituted.

Summarizing then, it is claimed that compulsory arbitration takes away some of our basic freedoms of the right to strike, freedom to make contracts etc. It gives a third party the power to make judgment in areas that should be negotiated by management and unions. No third party should direct management to pay certain wages, unless it can insure reasonable profits. "Wage determination, invariably leads to profit and price regulation and regimentation of the economy. It leads to socialization of industry." (Roberts:1967:27)

From experience, it is claimed that compulsory arbitration is unable to eliminate labour strife, seeing that strikes cannot be curtailed by simply passing a law banning them. This, it is said, leads to greater disputes in industry. As several authors have pointed out, it is difficult to enforce the law and penalties related to breaking the law. (Schwartz:1960) Because of this, the dispute moves into the area not of labour versus management, but of labour versus the government. Schwartz (1960:198) states that "we must realize that

with compulsory arbitration, strikes become strikes against the Government and not against individual employers. Government must bear the responsibility for economic breakdowns resulting from compulsory arbitration. It does not follow that strike s will be avoided merely because the Government adopts a system of compulsory arbitration."

For the existence of good labour relationships, the claim is made that mutual agreements are the best form that any labour dispute settlement could follow. Compulsion is anathema to the development of trust on the part of labour and management. Arbitrators do not have to live by the decisions they make, consequently their decisions are usually out of the specific and general context of the situation. They therefore run the risk of displeasing both labour and management. This occurrence in no way helps labour-management relations. It is felt that the arbitrators are subject to political pressure and appeal is made to an amorphous public interest, that they are ill-equipped to determine.

Other reasons for anti-compulsory arbitration feelings focus on the low success rat e of maintaining industrial peace in countries that have adopted compulsory arbitration. Some authors simply maintain that in terms of cost benefit analysis, compulsory arbitration is too high a price to pay for industrial peace. Indeed, all it does is to "intensify industrial unrest." Leiserson (1947:59) states that,

> ...to those who think that laws with teeth in them can improve human relations... the only answer I can give is that in democratic countries, strong laws providing for compulsory settlements and restrictions on strikes have proved less effective in maintaining peace and amity in labor relations, than the apparently weak, voluntary, conciliatory methods."

What has been attempted in the foregoing account is to give a brief survey of compulsory arbitration. It has been difficult to give a developmental perspective seeing that compulsory arbitration is a particular method of resolving industrial conflict. What was therefore more relevant, was to point out the conditions which facilitate the introduction by governments of compulsory arbitration. Numerous countries that have had some experience with some form of compulsory arbitration (Braum:1955:162) were also mentioned.

It has been shown that there are variants both of arbitration and compulsory arbitration. However, it would be begging the question, if one were to maintain that because there are different forms of compulsory arbitration, one cannot isolate a core area in this method. This was attempted by comparing voluntary arbitration with compulsory arbitration. A similar result could have been achieved by comparing collective bargaining with compulsory arbitration.

Finally some of the Pros and Cons of compulsory arbitration were enumerated. The claim then is that the list is not exhausted. It was not believed necessary at this time to state the objections that can be raised. This will be dealt with in Chapter III when the author

examines a theoretical model which attempts to account for the continuing failure of compulsory arbitration.

CHAPTER III

THEORY & INDUSTRIAL CONFLICT

Any examination of social phenomena must have some theoretical basis in order that the analysis be meaningful. Merton (1957) has taken pains to describe the contribution of theory to empirical research. If one's theory is sound, then it helps in defining the directions in which the research should go.

In the examination of a topic as controversial as compulsory arbitration where those who are for it are as vigorous in their beliefs of its essential goodness as those who are against it, it behoves the researcher to state the framework within which the examination is being done. As a step towards this, a theoretical perspective is important.

It can be advanced that there is no need to proffer the viewpoint that conflict theory may be better adapted to an examination of compulsory arbitration than consensus theory. However, the author affirms that if the aim of compulsory arbitration is the elimination of strikes in industry, one will have to use a theory that explains such conflict in society. Conflict theory is one of the few theories that recognizes conflict as an integral part of society. Therefore an extension of this notion would recignize strikes not as deviant acts which should

be legislated out of existence but as a feature of industrial relations that ways ought to be found to accomodate.

Dahrendorf (1954) speaks of the institutionalization of conflict through the collective bargaining process. Ground rules are set up as to how conflict will be pursued. His statements simply reinforce the fact that an adequate theory is necessary for any enquiry such as this. Because only then can one understand Horowitz"s (1962) distinction between consensus and co-operation. He believes that whereas,

> ... consensus stands for agreement internally, i.e. in terms of shared perspectives, agreements on the rules of association and action, a common set of norms and values. Co-operation for its part makes no demands on role uniformity but only upon procedural rules. Co-operation concerns the settlement of problems in terms which make possible the continuation of differences and even fundamental disagreements. Thus one can legitimately speak of cooperation between labour and management... (Ibid:278)

The type of agreement spoken of is not that there will be no strikes or lockouts - overt signs of conflict - but rather should such things happen there are rules, in the institutional framework, that should be followed. It is said that certain topics contain some built in assumptions; in discussing compulsory arbitration, conflict is one of the basic assumptions, for without overt conflict, there would be no need for compulsory arbitration.

The field of industrial relations can be considered a sub-system with certain actors participating. Indeed, if one adheres to the notion,

that society is composed of many interest groups, some of whose goals may be in conflict; and also, that the industrial relations system is a microcosm of this larger societal system, one can understand the assertion that industrial conflict is indeed a normal part of the industrial relations system.

Reasons for Industrial Conflict

It has been proffered by some visionaries of industrial relations that it is possible to have industrial peace. Homans (1954:58) expresses the idea that industrial harmony is achievable if certain conditions are met. These he saw as, "the conditions of substantial justice, not justice in terms of what theoretically ought to be, but justice in terms of what is felt to be just by all sorts of persons here and now." (Ibid:1954).

No one is in disagreement with his feeling that justice can bring harmony. However, it does display a naive assumption of the structure of power relations if one expects that justice is simply arrived at by two parties without a great fight. Indeed, one can suggest that harmony may prevail more so, in situations of injustice providing that there is ignorance of the wrong by the party on whom the wrong is being perpetrated.

It was Blumer (1954:235) who sought to distinguish three types of relationships which may occur among groups of people -

(a) "codified" - The case where there are shared expectations

which are followed by the participants.

(b) sympathetic relations - situation where behaviour is guided by personal sentiments and understanding

and

(c) power relations - which is marked by a proverbial "free for all". Interests here are in opposition, parties tending to rely on their respective strength achieve their aims.

As Blumer (1954:237) states,

> ...The function of management is to operate the business enterprise efficiently; its paramount interests are to manage profitably and to have the right to exercise that management. The labour union has as its paramount interests (i) the protection and advancement of the industrial welfare of the workers (ii) the survival and growth of the union as an organization. That these respective acts of interests come naturally into opposition is evident.

Bakke et al (1960:24) contend that labour relations being part of the larger field of human relations cannot but have conflict, especially as in the former, there is a setting providing for one party to give orders which the other is expected to follow. On the other hand, Kerr (1954:246) proposed that conflict between labour and management will occur because of (i) the clash of the unlimited desires of the contestants with the limited means of satisfying these desires, and (ii) the dynamic nature of society which will cause a shifting of an equilibrium that may have been established between management and union concerning a particular distribution of income and power. In seeking a definition of a new equilibrium, a contest will again ensue.

Industrial conflict may therefore take the form of (a) strikes

(b) peaceful bargaining and grievance handling (c) boycotts (d) political action (e) restriction of output (f) sabotage (g) absenteeism (h) personnel turnover (i) lockouts. These forms may either be on an individual or collective basis. The form with which this study is most interested is the strike.

Function of Conflict and the Strike

Coser (1967:311) observed that,

> ...the intensity of a conflict which threatens to "tear apart", which attacks the consensual basis of a social system, is related to the rigidity of the structure. What threatens the equilibrium of such a structure is not conflict as such, but the rigidity itself which permits hostilities to accumulate and to be channelled along one major line of cleavage once they break out in conflict.

In order that one may grasp the essential nature of conflict and see the necessity for permitting some facility for its expression, one has to grasp the points made by Coser. Indeed, it is essentially the same generalization that can be made to any system. If there is some dysfunction within any system and there is no outlet for its expression, then the cumulated dysfunctions when expressed will certainly be harsher, than if they were expressed at the time they first occurred. This factor has led industrial relations experts to state that the strike ought to be viewed as a form of tension release.

One reason cited for the length of strikes increasing in Canada

while they have been decreasing in most other industrialized countries, is the fact that the Canadian Industrial relations system has placed so many hurdles for unions to surmount before a strike can take place, that when it does the unions are unwilling to end the strike until all their demands are met. (Woodset al:1962)

It is not difficult to state the function of the strike when seen as an overt sign of industrial conflict. This is not to state that strikes are good. What is maintained is (i) that unions ought to be free in every sense to make use of this weapon: and (ii) if and when this weapon is used, it should be viewed from an obj ective perspective instead of with loaded value judgments.

The strike and the lockout help to induce settlements. It is said that were there no overt signs, disagreements will last longer resulting in more aggressive ways of displaying one's displeasure. Conflict between management and union often ensures that the worker will be better served. It is said that because they both compete for his loyalty, the worker stands to gain. A good summary of the function of conflict in adjusting the industrial relations system is Kerr's (1954: 247) statement that ,

> ...conflict and particularly open conflict reduces tensions. Smoldering discontent may exist for a long time without coming to a head.
>
> Such discontent is reflected in decreased efficiency and an increased cost of production. Even strikes may be preferable, clearing a surcharged atmosphere and affording a basis for a fresh start. Many an industry which has

had no strikes for years, nevertheless has anything but satisfactory industrial relations.

Current features not mentioned

Generally speaking if there is one trend that can be distinguished is that strikes are on the decrease rather than the increase. Ross and Hartman (1960) have shown in the fifteen countries they examined that strikes are declining rather than increasing. The reasons advanced by them are that employers have become more sympathetic to unions and have developed better working policies, that the State has become a greater employer of labour and has increased its involvement in industrial relations and finally labour unions are forsaking the use of the strike as a method of gaining their ends. Basically, then, one observes that contrary to popular belief strikes are declining. In cases where they are increasing, one has to look at the particular system to see what is contributing to this increase.

Many authors including Jager (1965), have shown that strikes take less from the economy than other things such as unemployment and under-employment and idleness caused from injuries suffered on the job. For the United States alone, Jager estimates that "over forty times as many man-days were lost because American workers could not find jobs." Loss to the economy calculated by the U.S. Labour Department was approximately "950 million to one billion man-days in 1964, compared with 23 million man-days lost from stoppages."

Another feature of industrial disputes which Governments in their haste to introduce compulsory arbitration fail to point out is that strikes tend to centre around certain industries and not others. Hartman (1960) and Ross (1961) in their discussion of strikes pointed out that some industries, which may vary depending on the countries, have a high propensity for strikes. In fact when one looks at strike statistics one may get an erroneous impression that strikes are a pervasive factor throughout all industries. They admonish the use of regulatory measures which may be based on this false picture. Disregarding the fact that the greater percentage of strikes fall within these "centres of conflict", governments to please the "public", may throw the whole system of collective bargaining in disarray by introducing stiff regulatory measures.

Whither Compulsory Arbitration?

What has been demonstrated up to this point is that within the industrial relations system, conflict will occur. One form of this conflict is the strike. However it has been shown that the strike apart from performing certain important functions within the industrial setting, also is on the decline. Therefore, the appeal to it as justification for the introduction of more regulatory types of legislation does not seem justified. It has also been shown that there are other factors which contribute more to the disruption of the economy

than do strikes. Nevertheless, it has been the intent of many a politician that strikes, with its attendant ills of man-days lost and therefore loss of revenue to the State, must be curbed. One way of curbing them, it is stated, is the use of compulsory arbitration.

Although, it may appear that much stress has been placed on the strike as an expression of conflict, rather than other forms of industrial disruptions, yet because of its use as justification for compulsory arbitration, it became incumbent to define certain of its features.

Another major reason for focusing on strikes is that compulsory arbitration aims at its elimination and/or control. Although in certain legislations, it may appear as though the parties are given the freedom to strike, yet the process through which they must go to achieve that goal is so intricate, that it can be assumed that compulsory arbitration prohibits strikes. Therefore it is definitely essential that we understand strikes if we hope to comprehend the claim that compulsory arbitration legislation is not feasible to resolve industrial conflict. Strikes ought to be regarded as the main dimension in this study of compulsory arbitration.

It would now seem that a very important variable, indeed some may claim, the most important variable that influence politicians to introduce compulsory legislation is public opinion. No philosophical or concrete discussion will be here entered to specify the role of certain interests

groups in the manipulation of public opinion. Suffice it to say that strikes are always taken to be anathema to the public interest. Public opinion is therefore interpreted as sanctioning any law which preserves the public interest. On mere economic reasoning, governments would most certainly be advised to direct their attention to creating jobs rather than curbing strikes. However, the public usually experiences the effects of a strike directly, whereas the same impact is not felt when jobs are created. Added to that factor is the high visibility of strikes and the low profile of job creation. It is therefore suggested, that compulsory arbitration legislation is more politically than economically engendered.

This leads us to our final reason for focusing on strikes. If the same number of strikes continue after compulsory arbitration as before, then it is safe to conclude that the legislation is a failure. One can only judge the success of any legislation by its aims. Compulsory arbitration aims at eliminating strikes. But having shown that strikes are the main justification of industrial systems which introduce arbitration legislation, we can safely state that if there is a general decline in strikes, then in the area of curbing strikes, the legislation is showing signs of success. Conversely, if strikes are at the same level or higher than they were before legislation was introduced, then, it is fair to conclude that the legislation has failed. This is the basic procedure that will be used in this inquiry.

This study is aimed at finding out whether compulsory arbitration can be successful. As Leiserson (1947:50) states,

> ...there is a common misconception that the Government is all powerful. If it passes a law, say to forbid certain kinds of strikes or some customary management or union practice, and the law has teeth in it, it is thought that the prohibited practices will really disappear except for violation here and there for which those responsible can be punished.

However, the question arises, is it ever possible to curb violations, when once they begin, and thus retain tight control over the industrial relations setting? And will this control be maintained by fines, imprisonment and/or other more rigorous methods? The spate of legislation with compulsory features, seems to indicate that governments believe compulsory arbitration is what is needed to steady the industrial relations system. Henry (1972:217) suggests that in the post-war period, there has been much more government intervention than in the ante-war period, in particular, former British colonies.

These colonies had adopted the voluntarism of the Mother Country. Therefore when Britain adopted the experiment with compulsory arbitration many of them had found the precedent needed for introducing compulsory arbitration. To mention a few developing countries all of which have borrowed features from both the Australian and New Zealand labour system, we have India, Ceylon, Ghana, Tanzania, Singapore and Trinidad and Tobago. Among countries that can

be ranked as developed with compulsory arbitration are Australia and New Zealand.

In a study of this kind, the difficulty always arises when one tries to establish a basis for examining countries with different rates of development, different psychological orientations, and other relevant variables which make the countries so unique that comparisons seem futile. The examination transcends this difficulty in a very important respect. Since the thesis is that compulsory arbitration contains its own destructive mechanism, then irrespective of the country examined one expects to see signs of its failings.

A Model for the Examination of the Operation of Compulsory Arbitration

The basic premise of this model is that it is possible to examine any country that has introduced compulsory arbitration and distinguish certain common characteristics in the legislation. This assertion arises from the claim that inherent contradictions in the compulsory arbitration machinery will contribute more to the failure of the legislation than any other factors. In this way, the relevance of other variables such as the political, economic and even the stage of union and management development is not denied, but the contradictions are what are held to be mainly responsible for the failure.

Because of this approach, countries with varied backgrounds may

be examined. Their unique socio-economic-political framework will account for the variance not explained by the inherent contradictions of compulsory arbitration.

Several theses can be advanced for the construction of a suitable model for the examination of the working of compulsory arbitration. The legislation may be conceived of, as one of legal borrowing into a system which is unsuited for such legislation, either by the fact that its institutions have not reached a compatible level of development to accept compulsory arbitration as part of the system; or by reference to lags which develop within a social system, whereby the industrial relations system may have outsripped other systems in its development. One will then find a similar result, that incompatibility of the systems will lead to some form of overt dysfunctions in some one of the systems.

The author has not chosen to ignore these methods of approach. But, the method chosen presents certain theoretical and methodological advantages. There is no need to seek out which dissimilar variables contribute to the success of compulsory arbitration in one setting as opposed to another. By concentrating on the legislation itself any country can be examined. One will then have to point out which features are usually found in compulsory arbitration legislation, whether or not they are present in the particular instance under review and what are the consequences. This approach in no way

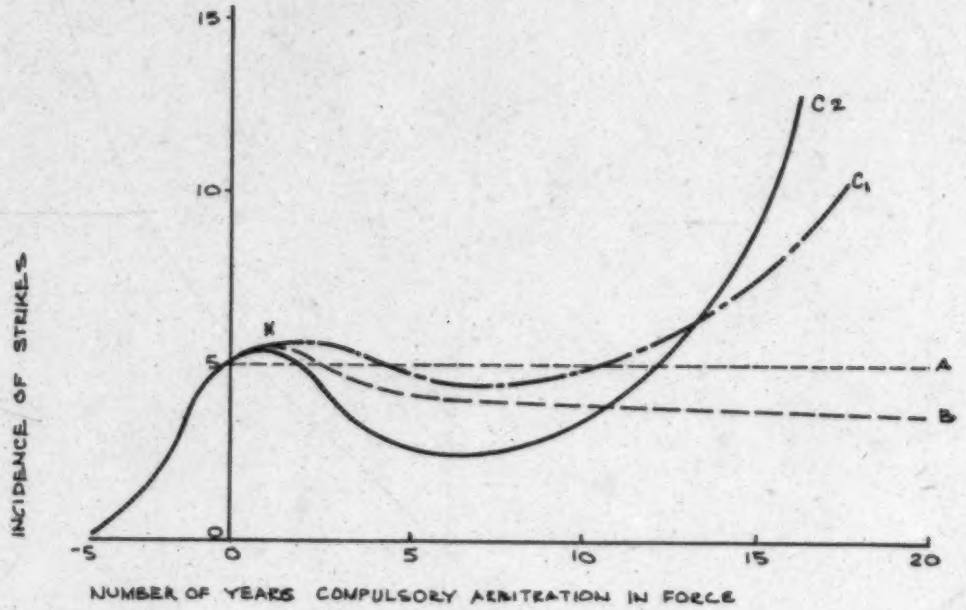
denies that this legislation has to operate in a particular type of environment. Nevertheless, regardless of the environment, if the particular features are in the legislation, the predicted increase in conflict will hold.

In concrete terms one can say that incidence of strikes is directly related to length of time compulsory arbitration has been in effect. This relationship is more direct than indirect by virtue of the fact that the longer compulsory arbitration is in force, the greater opportunity for the contradictions to be compounded and thus lead to increase strikes.

The Model

Figure 1 attempts to represent the level of strike activity found within a system with compulsory arbitration. The curve A is the level of strike activity that is defined by the Government as acceptable to the system. Government will therefore be prepared to accept a certain amount of strike activity providing it falls below the curve A. Compulsory arbitration is introduced at the crest of the curves C_1 and C_2. As a result of compulsory arbitration legislation, strike activity is brought below the acceptable level rendering greater justification for the retention of compulsory arbitration. As is seen from the predictive curve B, after compulsory arbitration is introduced, the level of strikes decreases below

FIGURE 1 HYPOTHETICAL RELATIONSHIP BETWEEN LENGTH OF TIME COMPULSORY ARBITRATION IS IN FORCE AND THE INCIDENCE OF STRIKES



X = Introduction of Compulsory Arbitration

C_1, C_2 = Predicted level of strike activity with introduction of X

A = "Realistic" tolerance level of strike activity

B = Given A, Gov't's predicted level of strike activity with introduction of X

the government standard A . Curves C_1 and C_2 show that strike activity does not follow B in its downward trend but rises above B and also A . (Note however that the curves C_1 and C_2 in reality show some depressions. Nevertheless, because of the overall increase in strike activity, it was thought that they could be represented by showing a continual upward trend.)

According to Figure 1, Governments when they do introduce compulsory arbitration believe that strikes will be represented by the curve B . It cannot be otherwise because of the deterrents placed in the way to strike. From this feature in the legislation, it is expected that strikes would be considerably lower than they were before the legislation was introduced; also that this decline in strike activity will reach an acceptable point before tapering off. This is the aim of compulsory arbitration. The acceptable point is determined by the major powers in the industrial relations system - government and management.

On the other hand, the thesis claims that rather than follow the predicted curve, strike activity in actuality will tend to follow curves C_1 and C_2. This is based on the previous discussion of the necessity of conflict to any system. Consequently, where legitimate avenues are unavailable, other outlets will be found.

Indeed, one will tend to observe that there is a decrease in strike activity after the legislation has been introduced, as represented by

curves C_1, C_2. However the political factor in the industrial relations system will influence the time period it takes before conflict appears to be on the rise. Such an occurrence depends on what politicians will do to enforce the new law. Revisions may be made to sections which seem unworkable; fines and/or jail terms may be imposed. Whatever politicians do will be related to the provisions in the Act. These provisions, it is hypothesized, are mainly responsible for the failure of compulsory arbitration. They are therefore to be looked upon as part of the contradictions of the legislation.

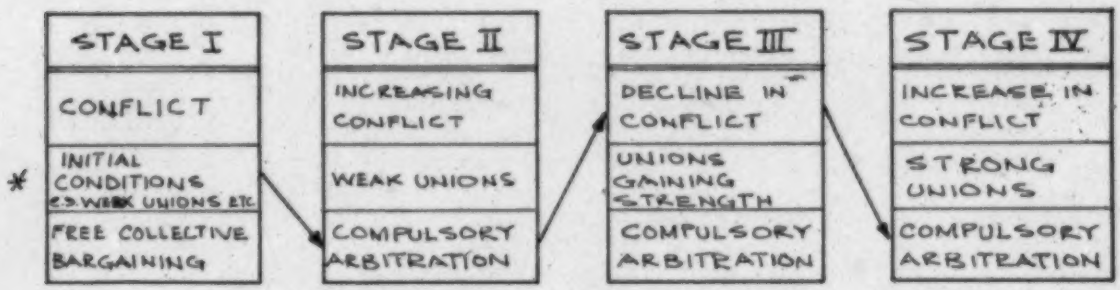
To represent Figure 1 diagramatically, a model has been constructed. According to Kaufman (1966:109) "one makes a 'model' by reducing any kind of system to that limited number of related elements that can still explain and account for the greatest range of facts." The purpose of the model is to make the Industrial Relations systems of Australia, New Zealand and Trinidad and Tobago, comparable.

Whenever compulsory arbitration is introduced, one may assume that there were some precipitating conditions. Usually these conditions include weak unions, multiple strikes, oppressive management, outcry from the public for protection of their interest - and together, the impact of these factors on the economy.

A construction of the reality surrounding the introduction of the legislation will indicate that unions find themselves the main target of

FIGURE 11

MODEL FOR EXAMINATION OF COMPULSORY ARBITRATION



*N. B. Several Initiating Conditions lead to the introduction of compulsory arbitration - only one of which is weak unions.

compulsory arbitration. It is on this assumption that the Model as constructed focuses on unions. What must also be borne in mind is that the inherent contradictions may be conceived in two facets; one can be called mechanical and the other organic.

The mechanical aspect of the model seeks to explain the union's role in the increase in strike activity. If unions are strong then they are capable of resisting government's efforts to impose compulsory arbitration. Nevertheless, historically compulsory arbitration has been introduced when unions are too weak to protest. The mechanical aspect of the model predicts that with compulsory arbitration unions cannot but get strong. If when they have reached positions of strength, compulsory arbitration is still retained, redolent of the period when they were weak, an increase in conflict must occur.

The organic aspect of the model suggests that in implementing the provisions made in compulsory arbitration, nothing but an increase in conflict can be seen. This is so because of the difficulty in upholding, what is now a law of the country, by imposing heavy fines and jail sentences. With compulsory arbitration strikes are no longer generically the same. They now become the strikes against the government in power. To force workers back to the job can meet with approval from the public; but to jail workers for not going to work is not admired by the public.

According to this model which takes in both the mechanical and

organic aspects, Stage 1 can be any period of time prior to the decision by Government to introduce compulsory arbitration. We make the assumption that in order for compulsory arbitration to be approved, the unions will have to be weak. In fact, weak unions usually clamour for compulsory arbitration, seeing that they get more than they normally will through the form of government supervision. Conflict in this model refers to strikes. The initial conditions apart from the weakness of unions, include increasing strikes, type of management and other factors relevant to industrial systems. From these initial conditions, Stage ll is arrived at, where, because of the conflict in Stage 1, and the initial conditions which go with it, Government feels justified to introduce compulsory arbitration. At this point, one can separate one variable which will be more important than the rest in determining the elimination of conflict in the industrial relations system - unions.

The rationale behind choosing unions as the main focus of the mechanistic aspect of the model has also been substantiated by Ross and Hartman (1960:63) who in their delineation of the leading influences relative to strike activity which can be used for comparison, suggest that we consider:

(1) Organizational stability

(a) Age of the labour movement
(b) Stability of membership in recent years

(2) Leadership conflicts in the labour movement

(a) Factionalism, rival unionism and rival federations
(b) Strength of communism in labour unions.

(3) Status of union-management relations

(a) Degree of acceptance by employers
(b) Consolidation of bargaining structure

(4) Labour Political activity

(a) Existence of labour party as a leading political party
(b) Labor-party governments

(5) Role of the State

(a) Extent of government activity in defining terms of employment
(b) Dispute - settlement policies and procedures.

These authors were speaking about a free collective bargaining situation. Under compulsory arbitration a few changes have to be made. One is that the role of the state has now been defined and therefore one knows the extent of their activity. They have introduced compulsory arbitration. However the role of the State takes on a different dimension under compulsory arbitration - the willingness of the State to use force and/or other measures to ensure the observation of the law. Such a feature is what should be considered part of the organic aspect of the model.

The relationship between labour and government under compulsory arbitration is important to the incidence of strikes. If unions are weak and they perceive government as being there to protect them, then strikes will be infrequent. If however their perception of the

government changes, then one can predict their indulgence in activities which they hope will force the government to make concessions. These activities may be strikes as well as other incidents demonstrating industrial conflict.

All the other factors can be considered without making modifications.

In Stage III as a result of the legislation, there is a decline in conflict (strikes), consequently, there is reason to believe that the legislation is working.

In Stage IV there is a relative increase in conflict and this leads to either the more rigorous enforcement of compulsory arbitration, or changes in certain sections of the legislation. It is at this stage that the application of the model may appear to end. However, as has been stated, there are slight depressions which although not shown on the curves C_1 and C_2 do appear in reality. However, because of their short duration the author has stated that these dips may be ignored. Consequently, if a long period of decreasing conflict is witnessed at this stage, factors outside the scope of compulsory arbitration would account for it.

This model can be used to examine compulsory arbitration at any level the researcher wants. He starts with a given - any legislation aimed at eliminating conflict is doomed to failure because conflict is part of our social system. However it may appear to work for some

time. During that period, however, the legislation is undergoing structural changes - called here organic. Consequently, it is only a matter of time before the legislation appears anachronistic seeing that the state of the actors for which it was introduced has changed, and therefore there is no more need for the legislation.

The author proceeds to use the model and analyze the functioning of compulsory arbitration in Australia, New Zealand and Trinidad and Tobago.

CHAPTER IV

APPLICATION OF THE MODEL - AUSTRALIA AND NEW ZEALAND

In applying the Model to the examination of compulsory arbitration in Australia and New Zealand, one must realize that Australia is a federation of several states, each with its own system of resolving industrial conflict. However, because of the pervasive nature of the federal laws in resolving industrial disputes throughout the country, it was thought unnecessary to present data by States. (Granted that if an examination is done by States certain differences would be found. However, when an aggregate is made, these differences cancel themselves out.)

With the model the object is to find out how compulsory arbitration has worked in Australia, New Zealand and Trinidad and Tobago. To simplify matters, the model could be viewed as having two components - (a) mechanistic and (b) organic. The mechanistic aspect specifies that an automatic change will occur with unions in the system. It was predicted that they will get strong. The organic aspect considers the implementation of compulsory arbitration and the effect this has on actors in the system. It was predicted that certain inherent contradictions in this interactional setting will lead to the

to the breakdown of compulsory arbitration.

However it was stated that the rate at which strikes would increase depends on the actions of the actors in the industrial relations system. Noteworthy is that the model does not see an end in view for conflict. There may be some fluctuation in strike activity, but the model seeds to explain the constant increase in strikes. Although this course is predicted, the intensity of strike activity depends solely on the actors - Management, Unions, Politicians and the Public.

With this background, a developmental approach can be taken in accounting for the unique industrial relations system of Australia and New Zealand. Instead of itemizing the contribution of each actor, the process of compulsory arbitration will be traced thereby allowing the reader a continuous flow of information.

STAGE 1

Precipitating Conditions - New Zealand

Around 1852 there was a gold discivery in Coromandel and many different areas in New Zealand. Unskilled immigrants poured into these gold fields. However by 1867, these same workers were out of work. With the Maori wars brought to end, employment was again provided. More immigrants were brought to work on the railways. According to Woods (1963:18),

> ... The newcomers and the former unemployed worked mainly in large groups dissociated from the more

> personal employer-employee link of earlier days and, in fact, removed from any close form of employer-employee relationship. These groups of men discovered that they had common problems peculiar to themselves and as this discovery proceeded the demarcation between workers and employers became more clear-cut. New Zealand was evolving a "working class" and approaching a social-political cleavage.

Together with the feature of immigration was that of an urban drift. This was not so much in the form of people moving from country as much as a rather enormous population increase in the towns as opposed to the country. This increase in population "produced a changing attitude towards economic and social problems, particularly through its influence on New Zealand politics where Governments become increasingly aware of the political strength of urban industries." (Woods:1963:19).

The Depression which started around the period 1877 brought about a great decrease in the availability of jobs. At this point the series of strikes for better wages which were prevalent during the boom period 1872 - 75 were now very ineffective. There was growing discontent among the workers and a growing membership among the unions. The New Zealand Trade and Labour Congress was formed and also district trade and labour councils.

During the period 1886 to 1890 there was a series of strikes. Employers at this time had become most unsympathetic to the growth of trade unions. In some cases they showed open hostility to employees

who were unionists. Another series of strikes took place from 1890 to 1894. This was caused mainly through the depression and also the newly found strength of the labour movement. They felt confident in being able to fight for their claims. Strikes occured both in New Zealand and Australia among seamen, wharf labourers, shearers, station hands, bootmakers, silver miners, coal miners, tramwaymen and other groups.

The maritime strike in New South Wales served as the test of the unions' strength. A stoker was dismissed for his involvement with the union. A strike was called which spread from New South Wales to New Zealand. Sympathetic strikes broke out.

Public support for the strikers remained as long as there was no inconvenience caused. However, when it was realized that the public will have to suffer somewhat, public's sumpathy turned against the unionists. Without the public's support, the increasing lack of funds, the unions were tactically weak. The employers neither accepted Government's offer to arbitrate, nor agreed to attend the conference called by the Government to discuss the strike. Some trade unionists fought but to no avail. Woods (1963:36) states that,

> ...The trade unionists in the coal mines and on the waterfront put up a bitter and determined fight, but a losing one. At the end of three months non-union labour plus the financial exhaustion of the unions forced the latter to capitulate. The employers proceeded to exact harsh terms. One

> coal company...gave its former union employees the option of signing an agreement and have nothing to do with trade unionism for twelve months or of being denied employment... In the main, employers insisted on three main points - retention of non-union labour, freedon of choice in future between union and non-union labour, and freedom to use union and non-union labour side by side. By the middle of 1891 almost all the miners' unions in New Zealand had gone out of existence while many others remained in a perilously weak condition.

It is with this background that one finds repeated demands by the unions for statutory recognition of unions. In February 1892, the Auckland Printers' Union asked for an Industrial and Arbitration Act. The third New Zealand Trades and Labour Congress held at Wellington in 1893 also requested compulsory arbitration. The fourth Congress held at Auckland also pressed for an Arbitration Act. In 1894, compulsory arbitration through the Industrial Conciliation and Arbitration Act was introduced with the full support of labour. It may be that the politicians knowing that with the enfranchisement of the worker a greater political force had to be dealt with and consequently their aim was to help labour and therefore secure the votes of the workers.

The supporters of this move had four main motives:

(a) avoid strikes

(b) grant unions recognized status

(c) elimimate child labour, regulate employment of women

(d) avoid industrial stoppages and get third party intervention in industrial disputes.

In summary the main conditions enumerated as forerunner of the Industrial Conciliation and Arbitration Act are:

(i) Influx of immigrants in the Gold Rush.

(ii) High rate of urbanization

(iii) The Depression

(iv) A management antagonistic to the aims of trade unions

(v) Presence of strikes

(vi) A public which fell out with labour

(vii) Politicians who understood the climate of opinion.

Precipitating Conditions - Australia

Australia passed through an historical development similar to New Zealand's, with one possible exception. It was New South Wales which first introduced a system of conciliation and arbitration and not the Commonwealth of Australia. O'Dea (1965:142) summarizes Australia's development into compulsory arbitration by remarking that,

> ...The trade unions learned the lesson well - they saw the role that the governments had played in helping to crush the strikes - and this inspired them to political action. This movement took two forms - support for compulsory industrial arbitration and the formation of political organizations designed to introduce legislation for the benefit of the working class. It was to be claimed that the conditions of the working class did not improve

until the formation of the Australian Labour Party. However the great advances in labour law and the institution of compulsory arbitration were made before labor formed a Government.

STAGE 11

Introduction of Compulsory Arbitration - New Zealand

Among the numerous features of the Industrial Conciliation and Arbitration Act of 1894, are the provision for a Court of Arbitration presided over by a Judge who must be a barrister or solicitor of not less than seven years standing of the Supreme Court.. The Judge has a permanent appointment. Two other members are appointed on the recommendation of the employers and employees associations for a period of three years in the first instance.

(2) Provision for the appointment of a Registrar of the Court, a Registrar of Industrial Unions, Conciliation Commissioners, and Clerks of Awards.

(3) The Court has power to hear industrial disputes and make awards, (ii) determine minimum conditions of employment (iii) interpret awards, industrial agreements and other matters within its jurisdiction (iv) deal with offences and enforcements of awards.

The system is based on voluntary registration of industrial unions and associations. Employers associations, to be eligible need no less than three members and unions no less than fifteen

or twenty-five percent of the total number of workers in the particular industry.

Unions have to made certain provisions regarding election and removal of officers and related conditions which seek to protect the workers.

An industrial agreement can be made between union of workers and employers and if registered with the Clerk of Awards within thirty days is binding on both parties as if it were issued by the Court of Arbitration.

If the two parties disagree, a dispute is "created". This is then referred to a Council of Conciliation convened by a Conciliation Commissioner made up of equal assessors representing both parties. If agreement is reached than it is filed with the Clerk of Awards and sent to the Court of arbitration to be issued as a Court award. If however, no agreement is reached, then the dispute is referred to the Court of Arbitration. The Court makes its award which is binding on both parties.

Awards can contain "qualified" or "unqualified" preference clauses if the parties agree. With the "qualified" preference the employer agrees to give preference to a unionist over a non-unionist in seeking to fill vacancies. An "unqualified" preference clause makes union membership a condition of employment. Awards may be less than but no more than three years. Exception to this rule is

found in the case where a union's registration has been cancelled.

> ...Strikes and lockouts as defined in the Act are illegal for unions bound by awards and industrial agreements. Most awards and industrial agreements contain disputes clauses specifying the procedure to be adopted by the parties when some matter arising out of the award but not specifically dealt with in it becomes a subject of dispute. Nevertheless, stoppages take place from time to time, although New Zealand as a general rule is exceptionally free from strikes and lockouts (Woods:1963:13).

As previously stated this area will be the main focus of the thesis as we attempt to find out how successful New Zealand has really been in curbing strikes.

Unions are free to register under the Industrial Conciliation and Arbitration Act or the Labour Disputes Investigation Act.

The Labour Disputes Investigation Act has provision similar to Canada's two step conciliation procedure. It permits strikes only after the procedure for settlement of a dispute has been exhausted i.e. (i) conciliation, a cooling-off period and (ii) a secret ballot concerning the strike is taken. For the purposes of this enquiry the focus on strike statistics is in no way affected by the presence of this Act. In the first place, there are very few unions registered under this Act. Secondly, one would predict from Canada's experience that unions operating under this Act will not curb their tendency to strike but rather such strikes would take a longer time to end when they do occur. Therefore strike statistics on the average do remain intact and truly representative of

the conditions which unions have to work with in New Zealand.

Introduction of Compulsory Arbitration - Australia

As previously stated each State in Australia has its own system of regulating industrial disputes. Consequently the Act which is described is that which affects any industry irrespective of which State it is in.

The conciliation and Arbitration Act, 1904 had as its main objectives

(i) to prevent lockouts and strikes in relation to industrial disputes

(ii) to constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes;

(iii) to provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;

(iv) in default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court, by equitable award;

(v) to enable States to refer industrial disputes to the Court and to permit the working of the Court and of State Industrial Authorities in aid of each other;

(vi) to facilitate and encourage the organization of representative bodies of employers and employees, and the submission of industrial disputes to the Court by organizations for the purposes of the Act;

(vii) to provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes; (O'Dea:1965:34)

Such were the provisions of the various Acts as first drafted. There are some notable differences between the Australian and New Zealand system which ought to be pointed out. (Tyndall:1960:159)

In the New Zealand system, provision is made for two lay members - one nominated by the organizations of employers and the other by the organization of employees. This is not the case with the Australian Commonwealth Conciliation and Arbitration Commission nor the Commonwealth Industrial Court.

The New Zealand Court has both legislative and arbitral powers. Consequently it interprets and supervises its own awards. Austrailia has two separate bodies - one for the arbitral and the other for judicial functions.

In New Zealand, industrial disputes hearings are conducted with a minimum of legalism and minimum cost to the disputants. In Australia, professional lawyers take a very active part in the proceedings thereby increasing the costs to the disputants and the legalism in the hearing.

New Zealand takes a shorter time to dispose of industrial disputes than Australia.

In both systems the Court is empowered to make basic awards. However the Australian system of assigning wages takes in the basic wage together with what is called a margin. This margin is worked out according to the worth of the particular skill for which bargaining

is being done.

Tyndall (1960:160) states specifically that

> ...The making of general orders varying minimum rates of wages in New Zealand does not involve separate consideration of the basic wage and of margins of differentials for skill and responsibility such as occurs under the Australian system. Following the making of a general order in New Zealand no component of the gross wage is exempt from negotiation in Conciliation Councils for new awards or agreements in any manner comparable to the way in which the basic wage is isolated in Australia.

It is claimed that negotiation and conciliation play a greater part in New Zealand's system than Australia's. However this statement is debatable. Compulsory unionism was in force in New Zealand until 1961 and replaced by preference clauses which in effect left compulsory unionism in force. In Australia the Conciliation and Arbitration Commission has the power to write preference clauses in the agreement.

The Attorney-General may intervene on behalf of the public interest in any matter before the Conciliation Commission or Arbitration Court.

In New Zealand strikes and lockouts covered by awards or industrial agreements are prohibited. Penalties are imposed on those who violate the law. In some cases the Minister has cancelled registration of the unions, thereby making it possible for another union to apply for registration and represent these workers. Bearing in mind the low number of workers necessary for registration

to be allowed, one can easily understand the fear of unions against this sanction.

In Australia, a prohibition of strike clause has to be inserted in the award. Whereupon if there is violation, application is made to the Court for enforcement. Depending on the Court's findings a breach may be declared. Heavy fines are then levied if no redress is forth coming.

STAGE 111

Industrial Disputes - Australia and New Zealand

Table 11 presents the number of disputes, working days lost and workers involved in industrial stoppages in New Zealand and Australia.

From Table 11 one can state that in both Australia and New Zealand the compulsory arbitration legislation seemed to be working effectively up to a point as seen through the strike statistics; in the case of Australia the turning period seemed to be 1941 when strikes began to show a definite trend on the increase. Before there was periodic fluctuation of strikes in the region described in the model as acceptable to government. In the case of New Zealand, the trend is one that follows the model more rigorously in that strikes have increased and decreased depending on certain conditions. Like Australia, strikes statistics have followed the model, save for the period during the depression, when there was a noticeable decrease

TABLE 11*

Industrial Disputes - New Zealand & Australia

	AUSTRALIA			NEW ZEALAND		
Year	D/C	W/T	D/J	D/C	W/T	D/J
1913	208	50,300	624,000	—	-	--
1914	337	71,000	109,000	--	--	--
1915	358	81,300	583,000	--	--	--
1916	508	170,000	1,678,000	--	--	--
1917	444	174,000	4,599,000	--	--	--
1918	298	56,400	580,000	--	--	--
1919	460	157,600	5,652,000	--	--	--
1920	554	155,600	1,872,000	77	15,133	-
1921	624	165,100	956,000	77	10,433	119,208
1922	445	116,300	859,000	58	6,414	93,456
1923	274	76,300	1,146,000	49	7,162	201,812
1924	504	152,400	918,000	34	14,815	89,105
1925	499	176,700	1,128,000	83	9,905	74,552
1926	360	113,000	1,310,000	59	6,264	47,811
1927	441	200,800	1,713,600	38	4,476	12,485
1928	287	96,400	777,300	39	9,258	21,997
1929	259	104,600	4,461,500	47	7,151	25,889
1930	183	54,200	1,511,200	38	5,467	31,669
1931	134	37,700	246,000	24	6,356	48,486
1932	127	32,900	212,300	23	9,355	108,605
1933	90	30,100	112,000	15	3,558	65,099
1934	155	50,900	370,400	24	3,773	10,393
1935	183	47,300	495,100	12	2,323	18,563
1936	235	60,600	497,200	43	7,354	16,980
1937	342	96,200	557,100	52	11,411	29,916
1938	376	144,000	1,338,000	72	11,388	35,456
1939	416	152,000	459,200	66	15,682	53,901
1940	350	192,600	1,507,300	57	10,475	28,097
1941	567	248,100	984,200	89	15,261	26,237
1942	602	169,300	378,200	65	14,345	51,189
1943	785	296,100	990,200	69	10,915	14,687
1944	941	276,400	912,800	149	29,766	52,602
1945	945	315,900	2,119,600	154	39,418	66,629
1946	869	348,500	1,947,800	96	15,696	30,393
1947	982	327,100	1,338,700	134	26,970	102,725
1948	1141	317,100	1,662,700	101	28,494	93,464
1949	849	264,600	1,334,000	123	61,536	218,172
1950	1276	431,700	2,062,900	129	91,492	271,475

.....cont'd

	AUSTRALIA			NEW ZEALAND		
Year	D/C	W/T	D/J	D/C	W/T	D/J
1951	1344	408,600	873,000	109	36,878	157,390
1952	1627	505,700	1,163,500	50	16,297	28,123
1953	1459	496,000	1,050,800	73	22,175	19,291
1954	1490	370,100	901,600	61	16,153	20,474
1955	1532	444,600	1,010,900	65	20,224	52,043
1956	1306	428,000	1,121,400	50	13,579	23,870
1957	1103	337,043	630,213	51	15,545	28,186
1958	987	282,849	439,830	49	13,709	18,788
1959	869	237,471	365,039	73	18,762	29,651
1960	1145	603,279	725,107	60	14,305	35,683
1961	815	300,357	606,811	71	16,626	38,185
1962	1183	353,853	508,755	96	39,921	93,157
1963	1250	412,708	581,568	60	14,911	54,490
1964	1334	545,628	911,358	93	34,779	66,834
1965	1346	475,044	815,869	105	15,267	21,814
1966	1273	394,851	732,084	145	33,132	99,095
1967	1340	483,274	705,315	89	28,490	139,490
1968	1713	720,321	1,079,464	153	37,458	130,267
1969	2014	1,285,198	1,957,957	169	44,041	138,675
1970	2738	1,367,400	2,393,700	323	110,096	277,348

D/C = No. of disputes

W/T = Workers involved

D/J = Working days lost

*Source: Australia 1913 - 1956 from Ross and Hartman's Appendix to Changing Patterns of Industrial Conflict. 1957 - 1970 from Year Book of Labour Statistics, 1962 & 1972; New Zealand Official Year Book, 1944, 1964 & 1972.

**Strikes and Lockouts

in strike activity.

It will be seen therefore from the model discribed in Chapter II that Australians and New Zealanders may have had reason to believe that compulsory arbitration was working depending on the time period examined. On inspection of international strike statistics it becomes more difficult, though, to comprehend the claim that compulsory arbitration has been doing a good job in Australia.

According to Ross and Hartman (1960:18) when figures of union members going on strike were examined for the fifteen countries in his study - Denmark, Netherlands, United Kingdom, Germany, Norway, Sweden, France, Japan, India, United States, Canada, Australia, Finland and South Africa - they found that participation by union members in strikes had declined in all countries with the exception of France and Australia. Australia was also among those countries where in relation to union membership, participation in strikes was extremely high. Australia was also the only country where strikes were increasing although the labour movement was relatively matured.

To Ross and Hartman this phenomenon appeared to be contrary to all their predictions concerning labour organization and industrial conflict. It was these authors who maintained that relative strike activity would be influenced by (1) Organizational stability (2) Leadership conflicts in the Labor Movement. (3) Status of union-management relations (4) Labour political activity and (5) Role of the state

They found that Australia's labour force was highly organized. The Australian labour movement was stable, Australia having one of the highest rates of unionization. Extreme rivalries in the labour movement were also rare. There was also a Labour Party with which the workers could identify, multi- employer bargaining agreements were typical, the government administered a compulsory arbitration system for resolving industrial conflicts. According to these facts Australia should have been among those countries with very little industrial conflict.

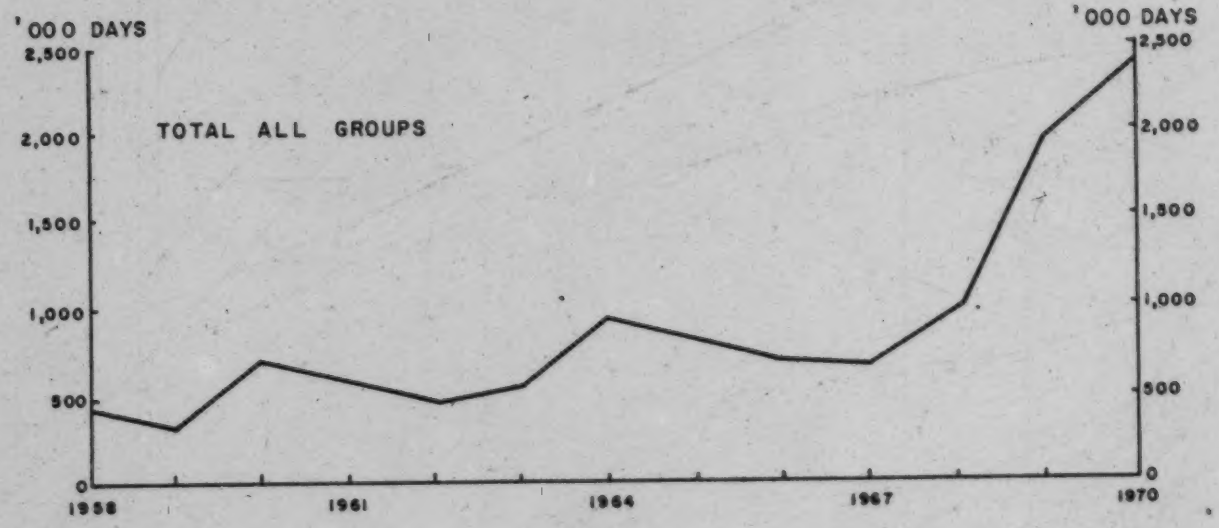
The authors did find that their prediction was faulted as Australia tended to be characterized by frequent short strikes, an average of 20% union members went on strikes between 1939 and 1941. This proportion has varied since, between 20 and 30 per cent. "The proportion of non-agricultural employees involved in strikes has been among the highest in the world ranging from 11% in 1939 - 41 to 18% in 1951 - 53" (Ibid:141).

Figure 111 shows the working days lost between 1958 and 1970 for all the main industries. This curve follows the C_1 path which was detailed in Figure 1. Although in Figure 111 "working days lost" is shown, yet there is no reason to believe that should "industrial stoppages" be detailed, there will be any difference in the upward direction of the curve. This is the claim of the model as it applies to industrial stoppages, even with periodic decline in strike activity,

* FIGURE 111

1958 – 1970: WORKING DAYS LOST – AUSTRAILIA

TOTAL INDUSTRY GROUPS



* YEAR BOOK AUSTRAILIA 1971:269

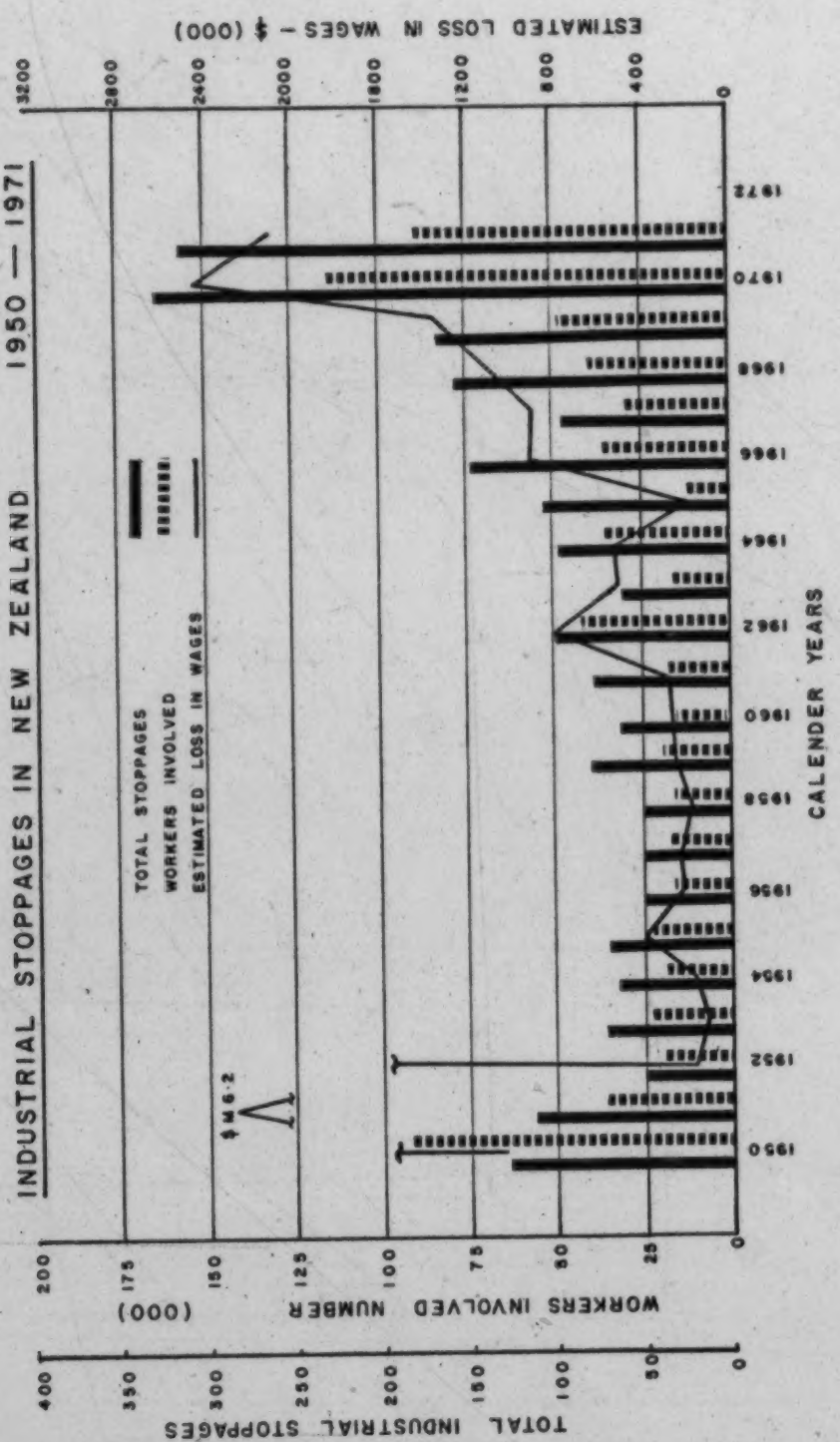
the trend is still upwards.

From Figure lll one can detect that although periodically there has been some decline in strike activity yet generally there has been an increase in working days lost.

Indeed these figures seem to confirm the type of model used for this thesis. Although strike activity will decline sometime after the introduction of compulsory arbitration, conflict as seen through the various forms of expressions would increase over time. Any strong indication of decline in strikes would therefore be accounted for by factors outside the compulsory arbitration machinery.

Before pursuing any explanation of Australia's trend, some comment on New Zealand's statistics on Industrial Disputes in Table ll is necessary. New Zealand, as stated before started showing a trend beginning as early as 1921. In fact, New Zealand's figures might have thrown doubt on the applicability of the model. However further examination, reveals that the only sustained period of decreasing conflict occurred during the depression era. Jobs were so difficult to get at that time and consequently it was unlikely that those fortunate to be employed would strike. Strikes were on the decrease with the exception of about two years up till 1940 when a definite increase is seen in 1941. This trend continued until 1941 when another spate is recognized which lasted until 1951. In 1952 there was an enormous decline followed by relative increases

FIGURE IV


INDUSTRIAL STOPPAGES IN NEW ZEALAND 1950 — 1971
TOTAL STOPPAGES
WORKERS INVOLVED
ESTIMATED LOSS IN WAGES
$M6·2
ESTIMATED LOSS IN WAGES - $ (000)
3200
2800
2400
2000
1600
1200
800
400
0
WORKERS INVOLVED NUMBER (000)
200
175
150
125
100
75
50
25
0
TOTAL INDUSTRIAL STOPPAGES
400
350
300
250
200
150
100
50
0
1950
1952
1954
1956
1958
1960
1962
1964
1966
1968
1970
1972
CALENDER YEARS

since. Figure IV attempts to illustrate the trend from 1950. The decrease and increase in conflict is what was predicted under compulsory arbitration.

In Figure IV, a clear rise in the number of industrial disputes in New Zealand can be discerned as from 1953. The rest of this chapter devotes itself to accounting for the apparent early success of compulsory arbitration in both Australia and New Zealand and the apparent decline in its efficacy as the years passed on.

STAGE IV

Industrial Disputes - New Zealand

The model shows that in Stage IV one can expect an increase in conflict. In order to understand these stages, it is necessary to analyze the operation of compulsory arbitration.

Bearing in mind that the mechanical aspect accounts for the change unions would naturally pass through, and the organic aspect refers to the effects of the implementation of compulsory arbitration legislation, it is expected that there will be more protest activities as unions get stronger. Also as the Act is executed, the unions which have become strong will protest and eventually lead the labour movement into increasing conflict.

Analysis of Industrial Arbitration - New Zealand

In the analysis of New Zealand's system of industrial relations one specific statement as quoted in Roberts (1967:20) comes to mind, that

> ...It has always been true historically that great social organizations have been willing to defy the law when they have considered that some vital interest of theirs is at stake when there are violently clashing conceptions of economic justice at work within the community, people cannot be expected to admit that judges possess a superior criterion of economic justice...From the very nature of the case, it could not be expected that arbitration would usher in a reign of peace in industrial relations.

To give credence to this statement the author will make periodic referrals to Table II as an historical development of the system is given. The reasons for the predictive curve B in Figure 1 not presenting a fair account of industrial conflict when compulsory arbitration is introduced would also be seen.

In the early years of compulsory arbitration 1894 - 1908, New Zealand's unions favored the system of conciliation and arbitration (Woods:1963:49). It was a period of labour shortage, rising prosperity in the country causing employers to be most favorably disposed in paying higher wages. This situation influenced unions to appeal moreso to the Arbitration Court than the Conciliation Boards to receive awards, as the Courts usually ruled in their favour. As has previously been stated one disadvantage of compulsory arbitration is that it prevents the sides from making any genuine efforts to

negotiate. The belief is rife that the parties may get a better deal if they take their dispute to the Arbitration Court.

The popularity of the legislation was also enhanced by the fact that there were still many sub-standard factory conditions which if the Court delivered a ruling on, could not but increase its prestige. As Woods (1963:86) notes,

> ...By 1908 there was evidence of a widespread mellowing and clarifying of opinions on industrial conciliation and arbitration. It was evident that employers, workers, and community had come to accept the Industrial Conciliation and Arbitration Act as a measure which had in general justified itself and to regard the Arbitration Court as a permanent institution. The status of the industrial worker in the community had been raised and consolidated within the new system and by 1908 there was an increasing willingness throughout many sections of the community to recognize the trade unions as responsible organizations.

However at the same time this machinery was in effect trade union membership began to soar. In 1904 there had been 109 registered unions with a total membership of 27,640 and by 1912 there were 322 unions with a membership of 60,622. (Woods: 1963:90). This factor led some unions who had not registered under the Arbitration Act to attempt changes within the Industrial Relations system. Strikes were on the increase. In order to counteract this state, the Government introduced the Labour Disputes Investigation Act in 1913 which effectively brought all unions outside the jurisdiction of the Arbitration Act under an industrial machinery

for controlling strikes.

The year 1920 is the first for which there is available statistics. The working of the Court through its assignment of periodic wage increases meant that unions remained admirers of the particular system. During 1925 the attack on the Arbitration system began with certain pronouncements which were unfavorable to the unions. These attacks culminated in a national conference in which several organizations were able to present their dissatisfactions with the system.

The strengthening of the conciliation machinery was called for. This proposition was vigorously opposed by labour. Labour was experiencing great success with the Arbitration Court and saw no need for the conciliation machinery.

The next major impact on New Zealand's labour relations came in 1935 when a labour Government was elected. They proceeded to introduce compulsory unionism in 1936. Referring to Table 11 one immediately sees the effect of this on industrial stoppages which showed a rise until 1951. The next trend is seen from 1952 to the present when the effect of Government's coercive power saw the demise of several trade unions in 1952.

In February 1951 a strike commenced in New Zealand's water-front. The union refused to submit its dispute to arbitration. This led to some harsh measures being employed by the Government.

The union that called the strike, the Waterside Workers' Union was deregistered which meant that any group of at least fifteen workers could form a union and reapply for registration. Several other unions that went on sympathy strikes were also deregistered.

To deal with the situation, the Waterfront Strike Emergency Regulations were enacted in 1951. These regulations gave the Minister of Labour the power to require a union to end a strike within a specified time and, failing to do so, the union was then liable to several sanctions that the Minister could declare. If a strike was deemed to be under this Act, then it became an offence to be a party to it, encourage its continuance, and incite, aid or abet the strike. The Minister could appoint a receiver for the funds of the union, and employment of members of the Armed Forces could be undertaken in the industry.

There is no doubt that it was these drastic measures which contributed to the low figures in strike activity for the year 1952. It resulted in the number of strikes per year being halved together with the average duration (Eberhart:1961:154). "The number of firms and the number of workers dropped by more than 60%. And the average working days lost per year were reduced by more than 80 percent." (Ibid:154) Such were the effects of force as applied by the Government so that the arbitration machinery would continue working. However as noted, strikes have continued to be on the

increase, culminating in an all time high in 1970 of 323.

The effects of force on the industrial system last as long as the Government is prepared to supplement it with more force.

One perceives a particular configuration in industrial stoppages - increase and decrease. As was stated in Chapter II in a system of industrial arbitration any pattern developed depends to a great deal on the amount of force the Government is prepared to use to ensure observance of the rules set down.

Environmental Factors

All activities within the industrial relations system are circumscribed by certain definite and indefinite elements. In constructing the mechanistic aspect of the model, the assumption was made that unions would definitely be affected by compulsory arbitration in a positive way in that they will become strong. If all other factors remain constant, then it is predicted that unions would seek to redefine the industrial system to their advantage, as a direct result of their growth. This, it was predicted would lead to industrial stoppages as reflected in strikes.

However, as is shown, very few factors in any system remain constant. Indeed, the industrial relations system being part of the social system is rather dynamic, fraught with change that escapes any legal definitions which seek to contain it. It is with these

environmental factors that the author now addresses himself, as it is thought they induce the inherent contradictions which lead to the less than average success expected of compulsory arbitration. It is this area that has been previously referred to as the organic aspect.

The first major impact on unions occurred in 1936 with the introduction of compulsory unionism. This feature in the Arbitration Act required any worker in benefit of an award to be registered with the union that received that award. Although several authors (Howells:1971; Cross:1961; Eberhart:1961) have stated that this feature has caused unions to remain weak (by providing them with instant membership and therefore removing their motivation to improve their organizational capabilities so that they will attract new members) yet this weakness does not show in the number of strikes that do occur. However it must be granted that the number of working days lost may be a more significant indicator of the weakness of unions than number of stoppages.

With compulsory unionism the union gets monopoly rights in the particular industry. As long as it follows the rules, through Government protection no other union can compete with it. Consequently this ensures the creation of a number of small unions (Howells:1971; Cross:1961). This situation is brought about

because unions are firm based, only a small number is required to form a union, and government protects such a union as soon as it is registered. Tyndall (1960) traces the effect on unions of compulsory unionism by showing that in 1921 unions had a membership of 98, 000; by 1939 the membership increased to 250, 000 out of a total population of 1, 600, 000 and 1958 membership was 324, 406 representing 47 per cent of the wage and salary earners in the country.

Although union membership has increased in numbers, yet the size of the unions has remained small. This has served to dampen the morale and initiative of union officials and members.

Howells (1971:65) has stated that,

> ...a disturbing feature of the small-scale character of unionism is the effect it has on initiative and morale. Hampered by legal control on the size of weekly contributions the unions' record in improving administration, providing full-time research and organizing staff and offering educational opportunities to members is a dismal one. The above lends support to the view held by some critics that if a union becomes a state agency it ceases to be a union in any real sense, and has no reason for existence except to secure an award of the Court. In fact, many unions are organized by the same "professional" secretary and consist of nothing but a formal organization made necessary by the legal system of fixing wages, and are almost completely lacking in any internal life amongst their members.

Because unions are assured of members they do not vie to attract or hold members.

Weak unions have also been indirectly supported by the economic

plight of New Zealand. The country has supported the growth of secondary industries through subsidies. To a certain extent they have been inefficient without losing the financial support of Government. Unions in these industries have no fear of their members job security as it is literally assured through the Government programs.

The Government's policy of full employment has also dampened any impetus unions may have had in protecting their members. There are usually job vacancies in many industries consequently members seem not too concerned with their unions.

The main result of compulsory unionism has been to encourage the formation and sustenance of weak unions. This has contributed to a great extent, in the unions not being able to sustain strikes when once they have initiated them. New Zealand therefore, shows a low "duration of stoppages." This is mainly because the strikes undertaken by these small weak unions are of the "stopwork meetings" or "protest strikes" variety.

Many authors have tried to account for the low strike activity in New Zealand. Howells (1971:66) believes that if any claim can be made for a low level of strike activity it would be accounted for, more by the industrial development which is conducive to small firms with a very scattered population.

Accordingly,

> ...A low level of strike activity would not be unexpected in an economy where the average-sized manufacturing unit employed fewer than 25 workers, where nearly 60 per cent of the labour force was in firms employing less than one hundred people, and where only a few groups have displayed the natural cohesion necessary for effective unionism. (Howells:1971:66)

Others have argued that low strikes occur because jurisdictional disputes are ruled out by the arbitration system. Although authors have suggested that economic factors should dictate a low level of strike activity in New Zealand, yet because this has not been so, attention has been paid to the arbitration machinery as paramount contributor to the increased level of strike activity.

As has been shown in Figure 11, recently stoppages have increased considerably. It leads one to wonder if unions are weak as some authors claim and strike activity is increasing so rapidly, what will happen if they become strong. Note that whereas prior to 1960 the strike prone industries accounted for most of the strikes, between 1960 and 1970 strikes have been spreading over a wider range of industries. Before 1960, an average of 33 workers per 1000 employed were involved in strikes. This figure has increased substantially. (Howells:1972:527). Between 1960 and 1970 working days lost per thousand employees have increased threefold over the period 1952 - 1959. New Zealand is now the only country with an increasing man-days lost per 1, 000 wage and

salary earners. This ability to sustain strikes indicates more than any other factor that New Zealand's unions are definitely becoming strong. With this strength, we have also witnessed a phenomenal increase in strike activity. "An increase of nearly 110 percent between the two periods for New Zealand, while the decrease in man-days lost ranged from 9 to 45 per cent for other countries." (Howells:1972:527)

With compulsory arbitration, seeing that strikes are in the main illegal, fines are provided for those who violate the law. In New Zealand a worker who takes part in a strike is liable to be fined $100, an officer $500 and the union $1, 000. Deregistration was also part of the sanction. In all compulsory arbitration laws provision is made for enforcement. However there is great difficulty in carrying out these sanctions.

Hare (1946:260) reports an incident which took place between 1940 - 1944 when 213 men were sentenced to imprisonment for one month for taking part in a strike. However the embarrassment caused through the mass trial, the lack of space in the prison and the fact that "urgent work was held up while the men served their sentences, has prevented any repetition of prison sentences."

Enforcement also breeds more conflict in the industrial relations system. Seeing that New Zealand has short strikes, it is very difficult to prosecute strikers. Before prosecution can begin

the men are already back on their jobs. After settlement is reached, no employer wants to poison the industrial atmosphere by bringing the men to trial. However if one has a system where there is no enforcement of the provisions made by law, then one can expect a possible breakdown in the machinery. If compulsory arbitration is to work, then it is necessary to have laws for the violation of its precepts. If however enforcement is coercive, then it adds greater conflict to the situation resulting in a spiralling of friction rather than a lessening.

Examination of the issues which cause the greatest conflict between employers and employees shows that wages are the main source of dispute claims. With compulsory arbitration the court usually defines the minimum and also the acceptable wage rates. In New Zealand's case as long as unions were receiving increases in the wage awards there was no problem. However, lately awards have been going in favour of employers, causing no end of displeasure to the unions.

Table III shows the results of the disputes arising in 1971. In this table, only stoppages with a final result definitely in favour of one or the other party is included. When workers made more than one demand and had limited success, the result was treated as compromise. In cases where strikers returned to their job without a definite decision, or cases of sympathetic strikes or

TABLE 111*

Causes and Results of Industrial Stoppages 1971 - New Zealand

RESULT	CAUSE						
	Wages	Hours	Employment	Other conditions	Sympathy	Other	Total
In favour of workers	29	1	12	12	1	11	66
In favour of employers	43	1	11	14	1	24	94
Compromise	40	-	9	16	1	11	77
Indeterminate	35	-	5	13	6	17	76
TOTALS	147	2	37	55	9	63	313

*Source - New Zealand Official Yearbook: 1972

protest strikes, these were treated as indeterminate.

In assessing the working of compulsory arbitration it is necessary to focus on wage determination and as seen from Table 111 it was definitely the major concern between employers and employees.

A dilemma exists, because of the success of unions which engaged in strike activity from 1952 onwards to get wage increases. Howells (1972:530) reports that the direct method of strikes resulted in awards going in favour of workers seventy-four times, to the employers forty-nine. What Table 111 illustrates is that with the decline of awards in favour of workers greater militancy is predicted on their part. So that if workers bargain by force and are successful then others will seek to strike in order to get their claims. If on the other hand the claims continually go in favour of the employers, unionists will seek to change that situation by supplying as much force as possible.

An attempt has been made to point out certain factors which may be contributing to the increasing number of stoppages in New Zealand. The author has maintained from the outset that the very aims of compulsory arbitration are anathema to the operation of a workable industrial relations system. The main contribution of compulsory arbitration in New Zealand's case has been the fostering of weak unions. These very weak unions have been

indulging in a great number of stoppages which seem to be increasingly successful in unions realizing their goals. However a more realistic interpretation seems to be that with the removal of compulsory unionism the earlier weakness of unions is being eroded. Within recent times unions seem to be striking longer and consequently with greater success. This factor would have been impossible, were unions not becoming strong.

The mechanistic aspect of the model which leads to the claim that increasingly unions become strong and then they seek to change the laws seems to be partially disproved. In the case of New Zealand, unions have only lately become strong owing to certain environmental factors already stated, yet strikes have definitely increased. Consequently, it will appear that the organic aspect of the model which referred to the implementation of compulsory arbitration has done more in explaining the increase in strikes than the growth of the unions. This fact was borne out especially in the periods where certain amendments were made to the Act and an increase or decrease in strike activity was seen, depending on how unions interpreted the new amendments.

Howells(1972:532) best summarizes the import of the claims made for the examination of compulsory arbitration in New Zealand and Australia. He contends compulsory arbitration has been put to the test and has shown several weaknesses. Indeed

> ...legal regulation might even worsen the situation. It may force an unwilling acceptance of the results, but forced obedience generates resistence which becomes a source of further conflict. It can develop into a habit-forming release from the obligations of hard, responsible bargaining. In particular, it cannot lay on the unions the kind of obligations which unions may undertake voluntarily and on management a flexible and participative relationship with workers. Legal norms and sanctions are blunt instruments in shaping worker-management relations. If industrial disputes are essentially contests for power, to expect a strict, comprehensive legal framework for industrial relations to eliminate such contests "is to expect a political miracle."

Analysis of Compulsory Arbitration - Australia

New Zealand and Australia are similar in many respects. Consequently in examining Australia only the features of the arbitration system which need emphasizing would be mentioned, as they affect strike activity in the country.

The arbitration system has been charged with the restricting of wage increases. Morris Weisz quoted in Roberts (1967:17) feels that the system has interfered with the smooth evolution of real wages. If Australia and New Zealand are compared with Great Britain and the United States one finds that real wages in Australia in 1968 was 108, New Zealand 109 and Great Britain 121 and the United States 131. He would therefore disagree with Foenander (1957:109) who sees the industrial regulation as really benefiting the workers.

Another aspect of compulsory arbitration related to wages is the

fact that the Court makes decisions on economic issues within a legal framework. Northrup (1964:44) points out that the law as stated allows the Court to tamper with the economy. However, the operations of the Court remains "outside the framework of general economic policy and without channels of communication between it and the policy-making agencies."

Australia as well as New Zealand have many small unions which owe their existence to the arbitration system. However they seem to be stronger than the New Zealand unions which account for their strike activity being proportionally greater than New Zealand's. Thus Phelps-Brown (1971:19) and Sykes (1965:242) have shown that the number of fines against unions is increasing rapidly.

Unions because of the economic policy of the country do not focus their attention on organizational drives. These weak unions would not have flourished were it not for compulsory arbitration. However they do and because no provision is made for dealing with grievances at the plant, many short stoppages occur (Kuhn:1956:60). Phelps-Brown (1971:28) quotes the Royal Commission on Trade Unions and Employers Associations 1965 - 1968 who stated that,

> ...as long as no effective method for the settlement of grievance exists no one can expect a threat of legal sanctions to restrain men from using the advantage they feel able to derive from sudden action in order to obtain a remedy for grievances which cannot be dealt with in an orderly fashion.

The Australian system provides for lawyers to present the case before the Court. Consequently what has evolved is a great deal of legalism in the system (Laffer:1958:419). The union hierarchy concentrating on the methods of winning increases, fail to provide any avenues for their members to express their dissatisfaction.

In attempting to enforce the sanctions the Court has put itself in an awkward position. It has been shown that although fines have been increasing strikes have not decreased. (Mills:1965:29). Deregistration has been attempted which has hurt the Court more than the Unions. Because when unions are deregistered the Court no longer has any power over them.

With the awards of the Court coming periodically, firms find it difficult to plan ahead according to O'Dea (1967:86). This inability to forecast causes prices to be fixed excessively high in order that employers may be able to pay increased wages if they are assigned by the Court.

These factors, together with those cited for New Zealand have definitely caused many labour relations experts within the last decade to re-examine the benefits of arbitration and see whether they are not outweighed by the disadvantages.

An attempt has been made to apply a model to the examination of compulsory arbitration in New Zealand and Australia. New Zealand

was done in extreme detail. Australia was not. However it is hoped that the information provided would lead the reader to question the wisdom of employing compulsory arbitration to "eliminate and regulate" industrial disputes.

In the following Chapter a country at a different stage of industrialization, varied social and economic conditions would be examined to determine whether compulsory arbitration through the curbing of strike activity would experience any greater success.

CHAPTER V

APPLICATION OF THE MODEL - TRINIDAD AND TOBAGO

In order to comprehend the interplay of forces which makes the industrial relations system in the island nation of Trinidad and Tobago, it is necessary to sketch the environment in which it operates. In attempting this task, one facet of reality must always be conjectured: rather than the social system being a simple system allowing for the generating of laws, it is a complex system. It is this factor which always lays the social scientist open to ridicule with charges such as "Could you all (sociologists in this case) not have predicted the race riots of the sixties?" How did you not know that a revolution would have occurred in the '70's in Trinidad?"

Scientists do know that oppression leads to several reactions, one of which may be passive acceptance of the oppressed state or violent reaction to get rid of the oppressors. However, those are only two of the numerous reactions which may take place. The problem lies in specifying the forces and the time that a conjunction of variables would bring about a predicted result. In fact some researchers have claimed that sociology is history - no more, no less. Seeing our inability to prospect, we retrospect. One need not hold such a pessimistic out-

look for the social sciences. However, there is this great necessity for the scientist to know the game that he is involved in - one with a complex system.

The examination of Australia and New Zealand with respect to their strike activity reveals the complex system with which every researcher is involved. Those two countries have all the conditions which should be conducive to a conflict-free industrial relations system - a mature labour movement, political parties representing labour's interests in the decision-making institutions of the country etc... - and yet one finds an increasing number of strikes in both countries. Apart from the fact that it is utterly misguided to expect that conflict in industry can be eliminated without its prior elimination in the rest of society, yet one is quite in order to expect a low occurrence. With the knowledge that conflict is inherent to society, the claim was made that the ills seen in the industrial relations system of the two countries can be accounted for by compulsory arbitration. Once again the author was stymied by the nature of complex systems. One can safely say, among other things, that an increase in strikes show the dissatisfaction of at least labour, with certain aspects of the industrial relations system. With such a proposition, one might have thought that labour would have demanded a repeal of the legislation in situations where they had the strength and power to. However, as Isaac (1968:438) has aptly pointed out, this has not been the case

in Australia although unions are working outside the arbitration system. Although,

> ...It was suggested earlier that the unions have indeed been showing increasing interest in 'working outside the arbitration system'. All this amounts to is an attempt by negotiation with individual employers to obtain wages in excess of awards wherever possible. But this does not mean that they would like to see the abandonment of the basic features of compulsory arbitration, especially if the penalty power of the present system could be reduced. The 1955 Congress of the A.C.T.U. endorsed the recommendation of the Arbitration Committee which stated, 'It is not suggested by the Committee that we should abandon the Arbitration form of adjusting industrial disputes, but that there should be radical changes in the machinery to settle either actual or potential disputes'.

Explanation for this reaction has been proffered in earlier chapters. Unions depend on compulsory arbitration for their existence and are therefore unprepared to abandon it because so much has been gained through its use.

On the other hand, Trinidad and Tobago have conditions which are far different from Australia and New Zealand's, yet we find a more active force among these unions to have changes in the law regarding arbitration.

The main common characteristic appears to be the compulsory arbitration machinery; hence the prediction, that it is this factor which contributes to the strike configuration seen in these countries. The difficulty arises in not being able to determine beforehand, the action which will be taken by groups and/or individuals that may affect

the industrial relations in some specific way. However, notwithstanding the aforementioned qualifications, Trinidad and Tobago still is experiencing some difficulties in having an effective compulsory arbitration system.

STAGE-1

Initial Conditions

To delineate factors for the introduction of compulsory arbitration in Trinidad and Tobago, a problem presents itself between different constructions of reality. Consequently, although one is told that the increasing number of strikes influenced the introduction of the Industrial Stabilization Act, on perusing Table IV, one sees that for the three years previous to the introduction of the Bill, strikes were on the decrease, workers involved and man-days lost were also declining.

In a speech made by the Prime Minister in the House of Representatives to introduce the Bill, (The Bill was called the Industrial Stabilization Act - I.S.A. - and among other things provided for compulsory arbitration of labour disputes) the fact that a low profile was shown in industrial disputes after 1962 was omitted by him in his analysis.

Quoted, he said,

> ...In the last five years 1960 to 1964 there have been 230 strikes in the country, an average of 46 a year. The number for the year 1962 was 75. The number of workers involved in these strikes

TABLE IV*

Industrial Disputes - Trinidad & Tobago: 1953 - 1971

Year	D/C	W/T	D/J
1953	7	1207	49, 157
1954	5	2686	131, 339
1955	3	435	20, 660
1956	7	11,028	244, 356
1957	6	530	812
1958	13	1751	13, 425
1959	69	12, 595	23, 894
1960	31	20, 898	178, 173
1961	35	12, 322	145, 105
1962	75	15, 962	164, 657
1963	48	17, 799	204, 971
1964	44	8, 097	95, 906
1965	4	7, 160	88, 051
1966	-	-	-
1967	5	648	3, 070
1968	9	2481	17, 568
1969	9	2767	19, 972
1970	64	11,280	99, 600
1971**	70	-	-

* Source - Yearbook of Labour Statistics, 1961, 1962, 1968, 1972.
N. B. It is possible to find conflicting figures in different years of the Year book.

** Trinidad Express: Pg. 3. Aug. 31, 1972.

> in five years was 74,574, an average of 15,000 per year... The total number of man-days lost on account of these strikes for five years was 803,899, which is an annual average of over 160,000...
>
> The price of those disturbances is reflected in the following figures which we have tried to compute quite quickly. The wages lost to workers by the strikes have amounted to approximately $4 1/2 million in five years... It is estimated that, on the basis of the loss in wages to the workers, the loss in terms of the purchasing power of the country as a whole is double the loss in wages, and therefore the loss is approximately $9 million.
>
> (Extract of Williams' speech to House of Representatives March 18, 1965)

Therefore according to the Prime Minister the principal reason for the introduction of the Bill was to maintain the economic viability of the country. One difference which immediately comes to mind between Australia, New Zealand and Trinidad and Tobago is the role the unions played in the introduction of the Act. In New Zealand the unions, the public and a Government favorable to unions agreed that Government intervention was necessary. This was not the case in Trinidad and Tobago.

Although economic considerations were given for the introduction of the Act, it seemed in retrospect, that it may have been ushered in more for political reasons.

In 1963 a Commission of Enquiry was appointed by the Governor General on the advice of the Cabinet of Trinidad and Tobago.

> ...To inquire into the nature and extent of subversive

> activity within Trinidad and Tobago with particular reference to its influence on the trade union movement the public services and the youth organizations: to ascertain the extent to which external influence contributes to such activity; and to make recommendations on the measures necessary for the protection of the democratic society as established in Trinidad and Tobago against such activity (Henry:1972:250)

The Commission of Inquiry into subversive activity disagreed with the claim that there was much to fear from the trade unions with respect to subversive activities. However, the very day that the I.S.A. was receiving second reading in the Lower House, the report of this Commission was tabled in the House of Representatives. It was now left to the public to deduce a link between the two. The Prime Minister in his speech before Parliament in support of the I.S.A. said that, "the Government have not been able to ignore the obvious facts that have developed over the years; that there is an element in the Community which can be called subversive; that that element has penetrated the trade union movement" (Henry:1972:251).

Consequently the Bill must be seen with its political over tones. Here a Government which felt threatened by the forces of Labour was determined to do all in its power to control labour and consequently its subversive activities. The Government therefore declared a State of Emergency in the sugar belt.

It is very important to realize that this important Bill which was supposedly to help the trade unions was presented to parliament in a

manner that could have been interpreted as anti-labour.

Ryan (1972:409) in commenting on the introduction of the Industrial Stabilization Act, maintained that,

> ...Acting under a pretext that there was a communist-inspired plot to create chaos in the country, the government declared a state of emergency in the sugar-belt in March 1965 under cover of which it steam-rollered a bill that has rigidly circumscribed the freedom to strike. The 'crisis' was clearly a manipulated one, and no hard evidence has been adduced to document it. The Bill... was pushed through the Legislature in one day, with vested interests given almost no time to study it. The Trade Union Congress, which had marched in support of the P.N.M. in 1961, was not consulted at all... Critics claim that the timing of the bill reflected the determination of the P.N.M. to prevent the 'freedom fighters' in the sugar industry from seizing the leadership of the Sugar Workers Union from the accomodationist executive and linking up with the radical O.W.T.U. It is claimed that a junction of these forces would have upset the political and ethnic balance and paved the way for a new, genuinely radical multiracial regime.

It seems as though the precipitating conditions surrounding the introduction of compulsory arbitration center around economics and politics. For a long time the labour movement has regarded itself as the standard-bearer of social reform for the peoples of Trinidad and Tobago. In this case it appeared that the Gover nment may well have had reason to suspect that a general strike would have taken place according to the following factors (Henry:1972:250; Harricharan:1966: 272). There were sporadic strikes in the sugar-belt, the Government printers went on strike, the Civil Service Association sought a showdown

with the government by issuing an ultimatum for the implementation of the new pay proposals. As such there is reason to believe that the Government may have misconstrued such demands as signs of a challenge to its authority and a conspiracy on the part of labour. In fact if one were to examine the type of strikes that had taken place in Trinidad, they fell in the category of interest disputes - recognition, representation etc. The new Act sought to eradicate such features. Consequently one may say that Trinidad had a crisis similar to Australia and New Zealand. However, in both those countries a main factor was that the unions were part and parcel in demanding the legislation. This was not the case in Trinidad and Tobago.

STAGE 11

Introduction of Compulsory Arbitration

One surprising element of the introduction of the I.S.A. in Trinidad and Tobago was the lack of input by the parties most directly affected by the legislation. It seems ironical that the title of the Act is "An Act to provide for the compulsory recognition by employers of trade unions" and at the same time Government released a report which throws doubt on the genuineness of labour leaders to pursue industrial goals. Indeed, if the Act was to receive the support of labour - a very important party to any industrial relations system's success - then the Government would have been well-advised to seek

labour's co-operation before presenting the Act to Parliament.

The Act provided for the setting up of an Industrial Court in the settling of labour disputes. The strike was prohibited with the requirement that all labour disputes must be submitted to binding arbitration.

The Court was charged with some tremendous responsibility in the area of economic development. In section 9 (2) of the Act the Court was supposed to take the following into consideration when determining their cases

> ...(a) the necessity to maintain a high level of domestic capital accumulation with a view to increasing the rate of economic growth and to providing greater employment opportunities;
>
> (b) the necessity to maintain and expand the level of employment;
>
> (c) the necessity to ensure workers a fair share of increases in productivity in enterprises;
>
> (d) the necessity to prevent gains in the wages of workers from being affected adversely by unnecessary and unjustified price increases;
>
> (e) the necessity to preserve and promote the competitive position of products of Trinidad and Tobago in the domestic market as well as in overseas markets;
>
> (f) the necessity for the establishment and maintenance of reasonable differentials in rewards between different categories of skills;
>
> (g) the need to maintain for Trinidad and Tobago a favourable balance of trade and balance of payments;
>
> (h) the need to ensure the continued ability of the Government of Trinidad and Tobago to finance development programs in the public sector. (I.S.A. Pg. 9 Section 9(2)

It can be seen that a Bill which had economic goals as its priority was introduced in an atmosphere charged with uncertainties about the reasons for the Bill. Whether this feeling was created by Government and/or the Labour movement is not the concern of this enquiry; what interests us is that there is sufficient evidence to support the view that the Labour movement could have perceived the legislation as one aimed at regulating their behaviour and ~~not~~ really improving their condition.

The Act, as previously stated provided for the establishment of an Industrial Court, which would form the nucleus for the implementation of the Act. The Court would comprise a President who shall be a Judge of the Supreme Court of Judicature and four other members, one of which shall be a barrister or solicitor of at least ten years standing, a qualified accountant, a qualified economist, and the last member shall be a qualified accountant, economist or be experienced in industrial relations.

Personnel was provided for the proper functioning of the Court which had to hear and determine trade disputes, register industrial agreements, and hear and determine complaints relating to the prices of goods and any other matter that fell under its purview.

The Act sought to eliminate recognition disputes by requiring that any union representing 51% of the workers in a particular firm, be recognized as the bargaining agent for those workers. In the event

that there was any dispute regarding representation that the Minister of Labour could not settle, such an issue would then be referred to the Court. The Act protects the right of the employer and the employee to be members of their respective organizations.

The public interest was to be guarded by the Attorney-General's department. Any time the Government felt that some issue before the Court, if decided in a particular way would jeopardize the public's interest, they were free to intervene. Although this has not been done on many occassions, yet it presents a potentially explosive situation. The Government therefore apart from setting up the machinery and offering the guidelines to be followed by the Court in determining the disputes before it, also was to take an active part in the protection of the people's interest. There is no doubt that the public's interest may need protection, but if this was built into the Act, as it appears from the provisions in the Act, then, it is difficult to justify the intervention of yet another party to protect the public.

Provision is made for the registration of industrial agreements with the Industrial Court. If the Minister believes any agreement is detrimental to the public interest, he may object to its registration. However, final authority appears to rest with the Court. Again the provision for the Minister's intervention may make suspect the independence of the Court. Especially in a developing country, where the Government controls all effective sources of power, it is not

surprising that there was initial fear by certain parties of this particular Bill. They may have conjectured the Court allowing particular increases in wages for example, and the Government stepping in and possibly using a type of "moral suasion" to have the Industrial Court change its mind about its decision.

Although it seems as though strikes and lockouts are not prohibited, they effectively are, through the procedure to be followed before such strikes could occur. The author has come across no commentator writing about this particular piece of legislation who states unions are free to strike. This notion is very important, if one is to understand the emphasis placed on strikes (during the tenure of compulsory arbitration) as a unit of analysis for the success of the legislation.

The Court also has jurisdiction in the regulation of prices. The Minister sets the maximum prices for certain goods. The Court has the power to change the prices if it found sufficient justification for so doing. Therefore certain problems could result because the regulation of prices is vested in two bodies.

The Court is responsible for administering wage and price control. Towards this end, it is to ensure that just and reasonable prices are charged for goods. Consequently it was highly possible that an individual could be charged and convicted for levying prices above the maximum set by the Minister and on appeal to the

Industrial Court, have that above-maximum price approved as the fair and just price that ought to be charged for the goods. Indeed if a precedent such as this were established, then the above-maximum prices could be charged until the dealer was caught He may then appeal to the Industrial Court which may find his "violation" price just and fair and therefore approve it. Circumstances may present themselves where people prefer to pay above-maximum prices than report it to the civil court.

It was also conceived that an economic and industrial research unit would come into being to aid the work of the Court, by the compiling and collection of data relevant to the functioning of the Court.

STAGE 111

Industrial Disputes - Trinidad & Tobago

From Table 1V one can discern as the model predicts a great decrease of strikes after the introduction of compulsory arbitration. In 1964 there were forty-four strikes whereas in 1965, the year compulsory arbitration was introduced there were four strikes. In the years following the introduction of the Bill, we have seen an all round increase in the number of strikes, workers involved, and working days lost. Truly one can maintain that the figures for post I.S.A. are smaller compared with pre-I.S.A., however the

increase seen in the last three years gives little reason to believe that the trend discerned is going to discontinue.

In the case of Trinidad and Tobago, Stage III, decrease in conflict appeared to be rather short. Consequently one can view Stage IV "increase in conflict" (re:model), as the stage before which a fluctuation - increase or decrease in strikes can occur depending on the actor's reaction to the failure of arbitration to curb strikes. It was predicted that after the introduction of compulsory arbitration, fear of the penalties would definitely act as a coercive force to prevent unions from striking. It is this very initial success of compulsory arbitration which justifies it being kept as law. As the model shows, strike activity decreases below the level acceptable to Government, hence reference to the success of arbitration. No one seems to analyze the reasons for the lack of strikes.

At this point it is good to interject that although many have taken the theoretical position that strikes should not be the focus in talking about industrial peace, yet frequent references are made to the fact that the industrial relations system is getting better because there are fewer strikes. However, on the assumption that enforcement of penalties is very crucial to the success of such legislation, it was predicted that if Government can rigorously enforce the law, then a decrease in conflict would possibly continue

for a long time. However, as soon as it is realized that the law can be transgressed with impunity, all parties would start using the most effective means of getting what they need - through strikes. This is now being practised in both Australia and New Zealand. Such behaviour may then lead to the Government either (a) abandoning the legislation entirely as was done in the Phillipines (b) becoming harsher as occurred in New Zealand in 1951, (c) making amendments to the existing Act hoping to weed out some of the problems as happened in Trinidad, or (d) different combinations of a, b, and c.

STAGE 1V

Increase in Conflict

In accounting for the increase in conflict in Stage 1V, it is necessary to analyze the working of the arbitration machinery.

As was previously stated the Industrial Stabilization Act, was ushered in with undue haste especially considering it was supposed to have profound influence on the lives of the workers in Trinidad and Tobago. The Bill which was given its second reading on March 18, was taken through all its stages in a marathon session which ended at 1.20 a.m. March 19. On that same day the Bill became law.

Because the Bill sought to curb strikes, Business was rather pleased with its introduction. Labour, on the other hand, was

dissatisfied. As stated before, the unions and management who were friends of the Government were consulted concerning the Bill. These unions supported the legislation. Other unions which have been against the Government rejected the Bill in its entirety. Then there were those unions which supported the Bill partially. Consequently, the fragmentation of the union movement was responsible for the fact that unions could not mount a concerted attack on the Bill. The Government being in the seat of power can choose the faction which best represents its views as representative of the entire movement. Other unions who did not agree with the I.S.A. were left open to be branded as irresponsible by not caring about the national interest. It was also unfortunate but not necessarily coincidental, that some unions who were against the Bill were also anti-government. This factor may have had some influence on the public's reactions. They probably viewed the objections to the Bill by these unions as just another indication that the union leaders were expressing their dislike for the Government. The public may have since got over that feeling therefore lending their support to the labour movement. This (support) has probably enabled unions to indulge in numerous strikes without fear of Government's actions.

Although Henry (1972:257) sees that the atmosphere in Trinidad may have been tense requiring some governmental action in 1965,

> "notwithstanding all this ..., it remains questionable whether so comprehensive and far-reaching a piece of legislation as the I.S.A. also the manner in which it was introduced, was warranted and justified."

He agrees that the Government may have had information to justify their action, but felt that such legislation, especially in the atmosphere that it was introduced, should have been temporary.

This statement again reminds us of the crux of this thesis. Because with the introduction of compulsory arbitration a definite decrease in strike activity will be found, it is rather tempting for any Government to fall prey to this success and seek to keep this law. One is already familiar with the predictions made should this course be followed. Trinidad and Tobago has proved the point that early success in no way serves to indicate what will happen in the future. One may therefore take among the first reactions to the system of compulsory arbitration the fact that some unions (among them some of the most powerful in the country - the leaders of which were suspected of subversive activities) were openly antagonistic to the Bill from its inception. It might have been conceded - were certain ill feelings that existed between the ruling party and at least one of the protesting unions not known - that the Government acted out of fear of "Red" power. In the context of which the Bill was introduced, the Government found itself in a less forgivable position. As Henry (1972:258) expressed,

> ...It it is presumed...that an element of subversion was penetrating the trade union movement, which in turn threatened the security of the country, and that it was therefore necessary to contain that trend by long-term legislative measures, then such long-term legislation should preferably not be identified or associated with emergency measures which might become necessary during a period of proclaimed emergency. The separation of the two should leave ample scope for participative determination of long-term policy, with or without complete consensus, but at least with the likelihood of greater acceptability and consent. Two fundamental conditions for the success of public policy and particularly for the success of an industrial relations policy.

There is no doubt that the use of the Court is great. As seen in Table V the Court appeared to be inadequate to handle the load referred to it.

From this table one can see that a large number of disputes are still referred to the Ministry for its action. In the first twelve months of the Act, out of 71 cases sent to the Court, 39 were determined. In the following 20 month period, 200 cases remained on the undetermined list of the Court. During 1968, more disputes were added to the list and at the beginning of 1969, 180 cases were undetermined leaving two hundred undetermined at the beginning of 1970.

One requirement of any conflict resolving process is the need for speedy and just settlements. Whenever these are not forthcoming, the actors in the system start questioning the very system

TABLE V*

Industrial Disputes ** Processed by
Ministry of Labour and Industrial Court: 1965 - 1969

Item	Disputes Processed	Number of Disputes				
		1965	1966	1967	1968	1969
1.	Total reported to Ministry in provisions of I.S.A.	147	500	558	500	698
2.	Disposed of by Ministry in Conciliation (Under I.S.A.)	98	334	314	287	350
3.	Referred back to, or withdrawn by disputants	-	1	31	75	183
4.	Referred by Ministry to Industrial Court	49	168	213	138	198
5.	Disposed of by Industrial Court	29	103	102	188	152
6.	Reported to Ministry outside of I.S.A.	123	97	141	130	138

*Source - Zin Henry: Labour Relations and Industrial Conflict in Commonwealth Caribbean Countries.

**Disputes in this table refer to all types of grievances encountered in labor-management relations as opposed to Table IV where industrial disputes mean strike activity.

that is supposed to guide them and a breakdown can be the result. Similar problems were experienced in the Phillipines causing them to drop that system eventually.

In trying to account for the magnitude of referrals to the Court, Henry (1972:259) points to the fact that many disputes which in pre-I.S.A. would not have found themselves in the Court, did so after the introduction of the Bill. There were also the unfounded allegations that certain anti-I.S.A. unions were trying to saturate the Court with disputes to render it ineffective. However, the number of awards ruled in favour of these unions demonstrate the inadequacy of this suggestion.

Another reason for the great number of cases maybe that after the introduction of the I.S.A. many cases which were thought to be forgotten were renewed in the hope of a more understanding response from the Court. These cases later found their way to the Industrial Court causing an increased load.

One definite effect of the I.S.A. (Henry:1972) is the formalization of contractual agreements. In order for any agreement to be legal it must be registered with the Court. Before the I.S.A. there was no such procedure consequently there is difficulty in accounting for the specific number of collective agreements prior to 1965.

The Act provides for compulsory recognition of any union with

51% of the employees of a particular firm. Up to the end of 1969 a total of 351 trade union claims for recognition was processed by the Ministry of Labour, the majority of which were ruled in favour of unions. Whether this can be cited as a result of the implementation of the I.S.A. it is difficult to say. Table VI shows the nature of the disputes referred to the Court.

TABLE VI*

Nature of Trade Disputes referred to Industrial Court

Year	Recog-nition	Contract Clauses in New Agreements	Conditions of Labour	Super-vision	Termination of Employment
1965	4	17	7	2	24
1966	10	45	78	6	76
1967	8	63	76	14	89
1968	10	32	34	6	49
1969	22	38	46	18	82

*Source - Henry, Op. Cit. Pg. 264

Although Henry (1972:264) cites the fact that there were 50 recognition strikes in the five years preceding the I.S.A. as an indicator that employers were becoming more sympathetic to the aims of unions, yet such a statement can be challenged. To make the claim which he does, one would have to assume that there were no recognition strikes during the period 1965 - 1969. Upon examining Table VI, the column of recognition disputes shows a steady increase. It is suggested that if the legislation had such a

positive effect on employers, a decrease rather than increase in recognition disputes would have occurred.

Indeed, knowing the nature of the relationship of employers to employees in developing countries, one would expect the employers to hold on to their power until they absolutely have to relinquish it and this involves an edict from the Court. Indeed this interpretation seems to be confirmed by the President of the Court himself who among other things, stated in his third Annual Report, that the time taken to process recognition claims is rather lengthy. He continues,

> ...Part of the problem here, which needs stern and effective measures to overcome it, springs from the conduct of employers of a well-known kind who still cling tenaciously in this day and age to atavistic and long out-moded attitudes to trade unions. They accordingly use any possible device imaginable to postpone and delay or to avoid the recognition of trade unions (Henry:1972:265).

One may therefore conclude that the Act has not had the effect on Employers it was supposed to... Employers are prepared to recognize unions only if they have to. They have also been willing to exploit the undue delays to their advantage. According to Ryan (1972:411), "Delays allow employers to take advantage of leadership rivalries to divide the workers and to prolong negotiations in the hope of having the dispute referred to the Court which has a long backlog of undelivered judgments". Frustration builds up in the labour movement as a result of these long delays. Truly

one may want to maintain that there is industrial peace. However, it will prove rather difficult to state the effects of this uneasy calm. It may be that productivity is affected. But whatever it is, the fact that so many variables are all intertwined, makes it impossible to detect what is happening.

Industrial Disputes - Trinidad and Tobago

Inherent Contradiction - Mechanical & Organic

It has been hypothesized that in implementing compulsory arbitration certain inherent contradictions will arise resulting in a slow/rapid demise of the machinery. The fact that strength will automatically accrue to Unions was termed the mechanical aspect of the machinery and the contradictions arising from the attempt to implement the machinery was termed organic.

Mechanical: Unions in Trinidad have never attained the strength they should have because of the rivalries that have plagued the movement. However, it would seem that they are gathering greater strength now with the presence of the I.S.A. The arbitration issue has served as the catalyst forcing unions with different ideologies to form an attack on a common enemy. This is meant in no way to suggest that all the unions dislike the I.S.A. However as far as the I.S.A. is concerned, it has made the Labour movement appear as more of a united front than it has been in the past.

Organic: Coupled with the mechanical change that takes place in the labour movement is the organic changes which occur as Goverhment attempts to implement its arbitration machinery.

The Court is the main body of vitiating and carrying out the policy of compulsory arbitration. It is in executing the Act that the contradictions arise.

The first guiding principle of the Court as stated in Section 9 (2) subsection (a) of the Act is the "necessity to maintain a high level of domestic capital accumulation with a view to increasing the rate of economic growth." It is a general belief that if the activity of unions is controlled then this goal can be easily achieved. The necessity to maintain industrial peace became even more acute because of the road Trinidad has taken to industrialize - euphemistically referred to as "industrialization by invitation". In this way attractive concessions are given to investors e.g. tax holidays, depeltion allowances etc. - to encourage them to invest in the country. It therefore became incumbent on the host government to see that the incoming investors find a favorable climate in which to invest. As it was hoped the investor would make use of labour (1) because it is the only capital the country has in abundance (2) as a means of decreasing unemployment and thereby alleviating some of the social ills which go with it, the government sought to make labour attractive. This meant a low level of strike activity. In Trinidad and Tobago it ushered in compulsory arbitration,

In a comment appearing in a local newspaper, the leader of the parliamentary opposition stated,

> ...there is no question about it, big business pressured government to introduce the Act. This was chiefly to help Texaco in dealing with the Oilfield Workers Trade Union and the Sugar Manufacturers in dealing with their workers. All this talk you hear about co-operation between Government and big business, what they really mean is dependence of this government on big business. The I.S.A. was the price of this dependence. (Trinidad Guardian:11-7-65)

Hameed (1972:21) has stated that capital formation is regarded as a "key factor in the growth process". Unions are therefore looked upon as stifling this growth by (i) encouraging the propensity to consume instead of enhancing the volume of saving and contributing to the accumulation of domestic capital, (ii) making development investment look less attractive to foreign investors, by their strike action which decreases production. However as he stated, the argument is based on a narrow definition of capital. He quotes Palekar who using Kuznet's definition of capital as one that "raises the capacity for economic production" asks "should we not therefore include in the term 'capital', outlays made in under-developed countries for food and shelter, which sustain productivity". (Ibid:22) He proffered that unions do in fact contribute to economic growth in the under-developed countries. Higher wages which enable the workers to better their standard of living do in fact contribute to capital formation.

The object of subsection (a) and (b) also relate to economic policy. The question is then asked is the domain of the Court the correct area for the setting of economic policy? Any court set up to deal with an industrial relations system, unless it intends to be bogged down with legal arguments such as in Australia, would find itself in a great dilemma in trying to determine what is just. As Northrup (1966:44) shows the Court is supposed to deal with the economy yet it conducts its operations "outside the framework of general economic policy and without the channels of communication between it and the policy-making agencies".

Therefore the first contradiction in the application of the I.S.A. appeared in the economic realm which supposedly initiated the introduction of the Act. When a court is set up, the one way it maintains its independence is by dealing with legal issues. To ask a court to make economic decisions, which may in fact be abrogated by some law passed by the Government is to uproot the faith that society is supposed to have in the Court and also to put the Court in a potentially embarrassing situation. Consequently whatever economic policy that was adhered to by the Court was not done so by design. Henry (1972:268) summarizes this point well. He figures that,

> ...it is questionable, in principle, whether a Court as a judicial body ought rightly to be required to formulate a national economic policy, as it would in effect be doing from

> stipulated considerations - Section 9 (2) of the kind. National economic policies are the prerogatives of government in consultation with various interest groups but a Court is neither an arm of government nor any such interest group. It must indeed be bound by legislative policy but, if it is to remain an independent judicial functionary, it ought not to be responsible in any way for such policy. In other words, a wages and incomes policy, which the considerations of section 9 (2) in effect aims at achieving, ought not to be the responsibility of a Court. What it may be required to do in this regard, is to determine whether there has been adherence or otherwise to a pre-determined and national economic policy.

In trying to regulate industrial conflict and setting economic policy other problems arise. If the Court were to adhere strictly to the public interest aspect some questioning of its independence must be done. As quoted in Brewster (1969:5) the President in the opening session of the Court stated that he took the opportunity to declare publicly and emphatically that the Court would be an independent one - virtually "free from the control, directions or influence of the Executive members of Parliament, political parties and personalities and all pressure groups and combines, guided or misguided that may appear on the scene now or hereafter". (Ibid:5) The Court, as it should, asserted its freedom from the body that was responsible for charting the course to economic viability. Therefore in doing what it had to do, the Court was in effect pointing up the contradictions inherent in the Act.

Price control was the concomitant result of having wage restraint. If wages are controlled and prices continue their upward surge, then one will be hard pressed to keep unions from not asking for increases for their members.

With the attempt to implement price controls, the tools of Industry were inadequate mainly because two bodies - the Court and the Ministry - had the power to set prices. The Ministry set maximum prices for goods, violations of which, were dealt with in the Magistrate's Court. The Industrial Court made sure that fair and just prices were charged for commodities. Brewster (1969:12) explained that "this (situation) gives rise to the rather odd situation that a party may be convicted in the Magistrates' Court of a statutory offence (selling above the maximum fixed price) and be allowed to continue selling at that "illegal" price because he, as an individual distributor, has satisfied the (Industrial) Court that the cost of the commodity to him . . . justifies the price he is charging".

Another major problem concerning the regulation of prices is related to the economy of Trinidad and Tobago. It is highly impossible to regulate prices in a country that imports most of the products to which price regulations have been assigned. For such regulations to work Government has to be prepared to subsidize the retailers. In fact, much of the blame for hoarding of foodstuffs can centre on the fact, that in a capitalist society, entrepreneurs

are out to maximize profits. If by selling the imports, a reasonable profit is not made, then these retailers are prepared to create a shortage by hoarding in order that prices may go up. At present there are numerous examples in that the recent price freeze of beef in Canada and the United States, far from having the effect of depressing the prices have resulted in an increase.

Finally in the area of restraints one has to consider wages. It should be stated that unions have never been opposed to wage fixation. What they have been opposed to is the non-control of profits. Brewster (1967:21) stated that "the unions (in Trinidad) seem to have an informal and reasoned approach to the question of income fixation. Their position is that if a good case is made out for wage restraint in conformity to some formula, they would support it." However, he pointed out that "the unions' support of 'incomes policy' is virtually conditioned on freezing the profit/wage ratio."

However the Prime Minister in a statement (Ibid:25) expressed the opinion that although unions have consistently sought to link profits with wages, the Industrial Stabilization Act will deal with wages whereas Government's fiscal and monetary policy would deal with profits.

It must be said that this position did not find favour with the unions. This was another of the several contradictions cited as

examples that the Government and business were working together to silence the labour movement. There is evidence from the context of the Bill to make such a deduction, although one will have to allow that it was not a conscious effort on their part.

Another aspect of the Arbitration machinery which exemplifies some of the inherent contradictions in the I.S.A. is that relating to the requirement of the Court to consider the public interest in determination of its awards. However as has been pointed out there are several facets to this problem. One is that although all collective agreements have to be registered with the Court, yet the Court cannot intervene in any agreement unless the Ministry makes its objection known to the Court. One will therefore have to ensure that the Ministry is observing the same guiding principles via its conciliators. If this is not being done, then it becomes ironical for the Ministry to intervene at the Court level, when its very officers were part of the formulation of the agreement. Consequently, the Labour Minister and the Attorney General have used their intervention policy very sparingly. The main claim is that the guidelines are too imprecise to dictate meaningful actions, Henry states that,

> ...for the same reason they (guidelines) have also been of limited application by the Industrial Court in the exercise of its jurisdiction to hear and determine disputes. But even if they were more precise, it seems inconsistent to leave parties virtually free in private negotiations

> not to apply these considerations but to require the Court to do so. And if it is asserted that the parties in private negotiations are not free to ignore them by virtue of the powers conferred on the Minister of Labour under section 19, there is yet a potential inconsistency, indeed a probable one, because the Minister's interpretation and application may not coincide with those of the Court whose function is judicial (Henry:1972:268)

Finally in appraising some of the contradictions of the compulsory arbitration, it is recognized that some penalties have to be provided for breaking the rules. However, the logic of the enquiry dictates that if there is a lapse in the enforcement process, then there is liable to be a breakdown in the machinery. Indeed, the author suggests that when any group contravenes a law and no punishment is meted out, this may lay the foundation for the same group to contravene different laws or for different groups to contravene the same law. The converse is true as well.

In the Industrial Relations system, this entails one group going on strike and no penalties arising. As Schwartz (1960:198) maintains "we must realize that with compulsory arbitration strikes become strikes against the government and not against individual employers. Government must bear the responsibility of economic breakdown resulting from compulsory arbitration." This is one of the side effects of the government getting very active in the field of industrial relations.

In regarding the success that labour unions have experienced

with the Industrial Court in Trinidad and Tobago one can only be pessimistic for the future when one looks at New Zealand's record. According to Roberts (1967:4) in the early days of compulsory arbitration in that country, everything proceeded fine for labour. Wages rose steadily, work hours were shortened and generally working conditions became better. On the death of the Prime Minister who was a statuch supporter of labour, the judge voted with the employer "in the next serious case and ... then the workers startled the government and the country by refusing to accept the award and going out on strike. The law provided that awards of the Arbitration Board must be accepted by both sides on penalty of heavy fines. The government could do very little. It came then upon the astounding fact, that to force compulsory arbitration upon an employer and to enforce it upon an employee were two totally different propositions" (Ibid:4).

In fact Trinidad has already gone through a stage similar to that. Only in Trinidad's case, there were no labour representatives in the Court so that the possibility of a coalition of forces did not exist. However, this did not stop workers in Trinidad's Public Transport Service Corporation from walking out in April 1969 when they thought the award of the Court was not to their liking. In the following year the strikes jumped immensely from 9 to 64 and then

to the record since the I.S.A., of 70 in 1971. As stated, it is highly improbable that any Government would seek to put a whole group of workers in jail. Consequently it is not unfounded that one of the main built-in contradictions of compulsory arbitration machinery is that it has to provide for enforcement which in all probability cannot be carried out. This is taken as a sign of Government weakness. Other unions may therefore test the Government to see whether the machinery is really ineffective. The government risks precipitating the country in a general strike if it presses too hard; it also risks alienating certain interest groups by its inaction. In most cases the workers seem to triumph. According to Bowrin, quoted in Ryan (1972:411)

> "..The workers have now taken over. They no longer ask Government to repeal the I.S.A. They have repealed it for themselves, nationally. They go slow, they go on strike, they call sympathy strikes with impunity. For them, whatever the Government may say, whatever the Industrial Court may do, the I.S.A. in 'industrial matters' is REPEALED."

This is a very telling statement.

So far we have examined the mechanical and organic aspect of the arbitration system in Trinidad and Tobago. We have found that concomitant with the growth of unions, the organic aspect has brought out certain contradictions in the Act - wage and price controls, enforcement breakdowns etc. It is now time for us to focus on the environment and actors within it, to account for their contribution

to the failure of compulsory arbitration.

Unions

(a) Age of Labour Movement

Unions are chosen as the first actor in the Industrial Relations system to be analysed as it is mainly their behaviour or "non-behaviour" which spurs governments to impose compulsory arbitration. It has already been demonstrated that the unions' ability to withstand the introduction of compulsory arbitration depends very much on their strength in organization and other relevant aspects of union development. Ross and Hartman (1960:63) have developed a model on union development showing areas which they believe contribute to industrial conflict. This model will be applied to Trinidad and Tobago to see if there were definite conditions facilitating industrial strife.

The first factor the authors name as having some relationship to industrial strife is organizational stability - this refers to the age of the labour movement and its stability of membership.

Although the labour movement in Trinidad and Tobago is growing, yet it cannot claim to be in existence as long as that of Australia. Trinidada was a British Colony. After the abolition of slavery, in 1834, workers had to be found for the plantations. Consequently when Australia and New Zealand were in a way consolidating their labour movement, Trinidad was still at the stage of trying to adjust to a newly

found freedom. At the same time, workers were being displaced as a result of the over-production of sugar in the rest of the world, the rise of the European sugar beet industry and the low tariff protection given by Britain to the West Indies.

Being a Crown colony, Trinidad followed the dictates of the Mother Country. Labour relations were therefore strictly determined by the different commissions of inquiry sent to the Island by Britain, although there were some nationals who served as an impetus for certain changes. The work of Arthur Andrew Cipriani in this respect did much to stimulate the growth of the labour movement in the country. Williams (1962:224) stated that in the early years of the Legislative Council, Cipriani was the only one to identify himself with labour. "He agitated for old age pensions, minimum wages, against the employment in the colony of persons from abroad, particularly South Africans and Americans, and against the nomination system." Because of the Crown Colony system, where the Governor, an expatriate, reigned supreme, any progressive step in labour relations usually had to emanate from him. With nominated members of the Governor ruling, it was a situation of a few ruling the many - a non-representative few at that.

In 1920 an Industrial Court was appointed to settle industrial disputes and to advise the Governor on industrial and economic questions. However no Court was ever established. In 1924,

there was a two month strike of sugar workers who were protesting low wages and oppressive working conditions in the sugar industry. In 1935, there was a strike in the oilfields during which time one hundred and twenty of the strikers staged a hunger march from the oilfields to Port-of-Spain, a distance of over 60 miles. In 1932 the Trade Union Ordinance which was passed "contained no provisions safeguarding the right for peaceful picketing or giving unions immunity against action in tort" (Williams:1960:232). In 1935 a Labour Ordinance relating to minimum wage was passed, however up to 1937 no action was taken. In 1935, the Secretary of State for the Colonies sent a letter to the different colonies requesting that Labour Departments be set up. The Government of Trinidad and Tobago ignored this dispatch. In 1937 a sit-down strike was called in the oilfields. The police mis-managed the situation and it eventually ended in one of the biggest labour disturbances in the West Indies. What is important for our purposes is the background to the happenings. As Williams (1962:232) argued, the disturbances had as its background,

> ...the expansion of the oil industry and the sugar industry combined with depression or depressing prospects in other branches of agriculture. On the other hand there was an explosive social situation arising out of the discontent of the workers who had no legitimate means of expressing their grievances, who had ho legal protection for ordinary trade union activities, and who found themselves, especially in agriculture, with the removal of the legal obligations of the employer during slavery

> and indenture, dependent solely upon the good-will of the employer.

The Commission of enquiry set up to investigate the disturbances found that the inadequate labour machinery, together with the deplorable working conditions of the workers and the unreasonable attitudes of the employers all contributed in no small way to the riots of 1937. However, as a result of the riots there was a definite increase in the labour unions. Before 1937 there was one union. Immediately after 1937, five other unions were registered. Of those, four registered in 1937 are still existing and are among the largest in the country - the Oilfield Workers' Trade Union; Federated Workers' Trade Union; Seamen and Waterfront Workers' Trade Union and the All Trinidad Sugar Estate and Factory Workers' Trade Union.

Together with the increase in Trade Unions after 1937, the labour Department set up machinery to deal with grievances of workers; a Trade Dispute (Arbitration and Inquiry) Ordinance was enacted in 1938 to helpnsettle disputes; in 1939 the Colonial Office created a Technical Department to deal with issues relevant to the social and labour policy, in the colonies; in 1943, an ordinance was passed providing for the auditing of union funds; in 1949 wages councils were set up with the power to submit proposals for the fixing of statutory minimum remuneration, holidays and holiday pay for workers. During the period 1950 to 1965 many different types of legislation, none as celebrated as the Industrial Stabilization Bill,

were introduced. As can be seen therefore the age of the labour movement runs for some forty years, not enough time to deem it mature.

(b) Stability of membership in recent years

If one gives a breakdown of the number of unions in the country over a period of time one gets an idea of the instability of the membership, mainly through the folding up of many unions.

In 1957 there were 67 registered workers organizations. In that same year 11 new workers' organizations were registered, 12 ceased to exist and consequently their registrations were cancelled. In 1964 there were 100 registered trade unions in the country. Several which were registered in 1957, ceased to exist in 1964. Indeed, in 1964 there were 14 new organizations registered. In 1966 there were 58 registered unions. As can be seen this differs with the 1964 figure of 100. Added to the rapid "turnover" of unions, was their small membership. In fact, in 1964, of those unions registered only twenty-three had a membership of over 200 (Harricharan:1966: 210).

Because unions are organized in Trinidad by firms rather than industry, a certain instability exists in the movement. Consequently as firms are established, so are unions. These unions usually lack the financial backing necessary to perpetuate themselves.

Another factor which has added to the demise of many unions is the poaching carried on by several unions. Of course if the unions had been established longer and had been strong and successful it made their task of enlisting members of the weak union, simpler. Another aspect of the same problem, is that unions tended to be of the "omnibus" or what some called "blanket type". According to Ross and Hartman (1962) Trinidad and Tobago would therefore have failed to show the degree of stability of membership necessary for industrial peace.

(c) Leadership conflicts in the Labour Movement

Under this heading Ross and Hartman discussed two facets to the problem (a) factionalism and (b) communism in the movement. They foresaw that if there were intense rivalries in the labour movement, conflict would increase; and also if there were communists who supposedly "infiltrate and stir up trouble" then conflict may indeed arise because of their subversive activities.

Dealing with communism in the movement, the author has already spoken of the Government's fear of communist infiltrators in the labour movement. As early as 1961 the Prime Minister of the country listed communism as one of the five challenges facing the Peoples' National Movement (of which he is party leader). The method was mainly a scare tactic as it was well known that his principal adviser

was an avowed Troskyite. He still felt that there was need to warn the populace. He expressed the feeling that "Communist sympathizers are associated with other West Indian territories. We have some in our midst, and like elsewhere, they seek to infiltrate our trade-union movement" (Ryan:1972:230). However, there is no reason at this point in time to believe that labour leaders who leaned to the left of center had anymore to do with creating conflict in the society than those to the right. However in the particular context one may find reason to excuse the Head of state for his remark. As stated before there is nothing to suggest that the labour leaders were set to overthrow the Government. It may be that labour leaders of "communist" leanings were more aware of the exploitative nature of capitalism and were consequently set on seeing that the workers got the best from the system. This could have caused them to make greater demands on employers. In the case of the O. W. T. U. which, seemed to have always had a socialist leadership, this claim seems especially relevant. The present leader has been acclaimed by all as an astute bargaining agent although his success in the political arena is yet to be realized.

Therefore a type of indirect relationship could have been established between union leaders of a socialist school and labour unrest.

With respect to union rivalries, this has been rife since the

inception of the labour movement. It would seem in an economy of high unemployment, that organizations which can bring some financial returns - the more the better - would blossom forth. The mushrooming of unions in Trinidad can also be interpreted as a way of providing jobs for the full-time officers. This has already been seen in the case of Trinidad and Tobago. Another side of this coin points to the fact that unions will try their best to gather members just for their self-perpetuation. With this background we can establish the rivalries which fall into three categories (a) inter-union (b) national union (c) union and government.

A brief mention has already been made concerning reasons for inter-union rivalries. With respect to the national body, they have been split more along ideological grounds. The Trade Union Congress was established in 1938. There have been splits since that time with unions leaving the general body because the leadership refused to take the national body from the communist leaning W.F.T.U. Two rival national bodies were set up resulting in the strength of the labour movement being withered away.

Unions also became rivals because of the political affiliations of the unions' leadership. At different times, union leaders have run for parliament. In their election speeches, they have, of necessity, been critical of the government. Union leaders who favored the Government but were on no political platform, had two

alternatives - to remain still and show some semblance of neutrality or to break silence and show their political allegiance. Either course presented problems. Remaining quiet could be interpreted by the Government as an anti-Government stance. Supporting the Government could jeopardize the credibility of these leaders with management and other union leaders. Therefore when the I.S.A. was introduced in Trinidad, it was not surprising to find certain unions supporting the legislation. This was done with the expectation that the union leadership would be rewarded at some future date, or it could have been, that these unions actually saw some good in the legislation. Recent experience and government policy seem to indicate the former may have been the reason for unions support.

Jacobs (1971:12 - 23) in speaking of factors affecting trade union organization has expressed the view that "the exclusion of trade unions from the political decision-making machinery has contributed significantly to the continuing state of disequilibrium" (Ibid:13) He continues,

> ...Official Government policy too has been in some measure responsible for the multiplicity of Trade Unions. The colonial as well as the post-colonial governments have tended to encourage the maintenance of "acceptable" trade unions. However, it sometimes happens that these "acceptable" unions are not as effective in pressing the workers' demands as the ideologically "unacceptable" ones. In other circumstances the workers would tend to shift to the more effective union. But because they consider it

> politically wise they tend to stay with the less effective though "acceptable" union. The result is that acceptability bolsters the ineffective unions thus keeping them in business when they might otherwise have died for lack of membership (Ibid:18)

Together then with the encouragement of "acceptable" unions was the responsibility of these unions to support the government seeing that in a certain way they owed their existence to the government. What this indicates is that some response of unions to compulsory arbitration was circumscribed by political expediency. Added to this was the fact that the "unacceptable" unions had nothing to lose by opposing the government. Consequently it becomes difficult to determine whether their opposition to the Bill was anti-government or anti-I.S.A. It seems as though it was a bit of both.

(d) Status of union-management relations

It has already been shown that management was not predisposed to accepting unions to represent "their" employees. These employers felt that they understood the feelings of their employees better than any unions could. The fact that employers were mainly white did not in any way help the situation, seeing that they tended to have a paternalistic attitude towards the workers. One cannot therefore say that the state of union-management relations was such to encourage peace in industry. Over the years, many strikes involved recognition issues. As has already been pointed out by the President

of the Industrial Court, management only recognized unions when they absolutely had to.

Henry (1972:88) described management in the Caribbean region as adhering to "Theory X" where the assumption is that the average human being dislikes work and consequently has to be "coerced" and/or "directed" in order for him to work. He shows that the negative attitudes of many employers to employees arose from the fact that many of the firms were family owned and family-managed. Consequently top levels of management were given to members outside of the family only if their allegiance was assured. Also, not many business firms employed industrial relations officers. His most salient point seemed to be that,

> ...work theories and attitudes born out of a slave system naturally reinforce assumptions such as those upon which "Theory X" is founded. Impressions and beliefs that West Indian workers are particularly lazy and dislike work are strongly ingrained in employers' minds and in turn workers' attitudes tend to reinforce such assumptions. The result is that harsh and oppressive management patterns and management through rigid controls are perpetuated. That Caribbean pattern-setting management evolved out of plantation agriculture and, further, that plantation management in the region has been traditionally incompetent, serve to aggravate the situation.

(e) Labour Political Activity

Labour political activity has already been traced to a certain extent. However in view of the fact that party government only came to

Trinidad in 1956 and the ruling party then, (it is still the party in power) declared that it would make no deals with Labour, we have a situation where Labour was powerless to bring about major reforms because of their non-representation in government.

Thomas (1971) believes that the low representation was due to the fact that the mmvement did not officially back a political party. Added to this was the opinion throughout the history of unionism in the Caribbean that labour leaders were to be labour leaders and nothing else. One also had to bear in mind that workers did not have pleasant memories of labour leaders who were elected to parliament. Starting in the 1937 riots, Cipriani who was regarded as the champion of labour's cause made it plain that none of the members of his organization took part in the riots. He, therefore dissociated himself from the workers' revolution. We have already seen the benefits of these riots. Rienzi who in 1943 was "the first real representative of labour" in the Executive Council resigned his post as President of his union after getting a high civil service post. John Rojas, a trade unionist who served as President of the Oilfield Workers Trade Union for eighteen years and who once called upon "all the oppressed workers of Trinidad to rally wholeheartedly under the banner of Trade Unionism and the Socialist Party" (Ibid:20) after his appointment to the Senate in 1962 "charged that 'Marxists' in the Trade Union movement were collaborating with others to bring

about a revolution." These examples suffice to show the climate in which union members who sought political office could be regarded. We therefore had a situation where unions were afraid to lend support to any political party because of the ramifications earlier discussed; those that did, usually wanted repayment through some office. There was nothing wrong with this save that these leaders usually abandoned the movement upon receipt of their appointments.

The other point discussed by Ross and Hartman in the relation to the "Role of the State" becomes superfluous in an arena where there is direct government intervention through compulsory arbitration. The authors were referring to a system of free collective bargaining and consequently the amount of government intervention can vary. But in a system where the ultimate form of government intervention - compulsory arbitration - is present, the role of the state as a constant guardian of the industrial relations system is assured. In this particular area then, all other variables alluded to by Ross and Hartman become subservient. The fact that all disputes must be resolved by following a particular procedure which ends in compulsory arbitration, conflict should have decreased after the introduction of the I.S.A. As has been demonstrated, this was not the case. An attempt was therefore made to show the disorganized state of unions before compulsory arbitration was introduced and how this factor may have facilitated unions' "acceptance" of this law.

Management

Whenever one speaks about management in a developing country racial overtones cannot but come to the fore. A report of the Commission of Inquiry into Racial and Colour Discrimination in the Private Sector (resulting from the refusal of the Trinidad Country Club to allow two black visitors to use their tennis facilities which they were entitled to as guests of the Hilton Hotel) in Trinidad said,

> ...we are impressed generally in the case of the banks that a state of racial and colour imbalance does exist; that the imbalance exists because of the inheritance of institutionalized forms of discrimination which have not been completely changed. ...Some banks have been more radical and progressive than others, but in general the older the bank, the more conservative its policy appeared ...Even though active discrimination in new appointments may have ceased, the social effects of past discrimination still remain highly visible...(Ryan:1972:364)

It may be noted that the great majority of the banks in Trinidad are foreign-owned. With the legacy of a plantation economy, a particular class relationship, in most cases based on colour, has developed in the island. Some, however, who are "fortunate" to be light skinned use this as "rite de passage" in getting top positions with private enterprise. The colonial government actively encouraged this policy.

In the work relationship, not infrequent it is found that the higher managerial positions are usually reserved for the native whites or near whites and white expatriates. Although in some instances, there may be justification for choosing an expatriate for a top position,

yet there are cases where a man who could do the job as well, (because he was native) was passed over for a white expatriate. There is evidence that in certain industries, the native black is treated different from the native white. In a recent study by Camejo (1970:316) the author states with respect to discrimination in Trinidad,

> ...the sphere of employment in which racial discrimination seems most likely to have been present is in the process of hiring top and middle positions in organizations, and promotion to elite positions. This possibility of racial discrimination is reflected in the data which deal with the hiring, promotion, and career patterns of 116 members of the business elite, the majority of whom are white, numbering 78 to 67 per cent of this elite group. Among those who were hired into top and middle positions and subsequently promoted to elite positions the patterns of hiring and promotion seem to suggest the operation of a sponsoring system favouring whites and off-whites with relatively low levels of education when compared with members of other racial groups, particularly Negroes, Chinese, and Indians, the majority of whom had advanced education whilst the others had at least higher education.

Knowing this, one has to understand some of the demands of the unions; they, who have been regarded as the forerunners in trying to overthrow different types of injustices in society, may have in several cases been forced to resort to strikes, because of the contempt in which they were held by management.

In areas where natives were fortunate to be given positions at the top, they were usually light or brown skinned. When a black was given a position he usually found himself being more oppressive than

the expatriate. From personal communication with friends who have worked with employers such as Federation Chemical Limited, Texaco and Shell, the consensus is that the expatriate was a better supervisor than either the black or the native white. The native white was difficult to work under (marginality of status may serve as an explanation). The black tried to justify his choice as supervisor, by being extremely strict.

A situation resulted where the natives would prefer to work under the expatriate. This state was encouraged by the status hierarchy maintained by the employers. A few blacks would be given junior staff positions. Management held out these as examples of what others can attain if they followed the "right" steps - obedience and hard work. In this way an effective controlling device was erected so that only a few locals could ever gain promotion. No wonder management objected strongly to unions eroding the power which they believed rightly belonged to them.

Employers were among the first to applaud the introduction of compulsory arbitration. It may be said that they could have wanted this in order to avoid meeting the union leaders face to face and/or because of a genuine interest in industrial peace.

However, because of a conjuction of forces, labour and management were always having problems defining an acceptable area to work in. Historically, management was always in the dominant relationship in

the Industrial relations system. When this fact is added to the situation that the employers were mainly white and expressed feelings of hostility towards the native workers, one can understand the tense atmosphere in which negotiations probably took place. It can be assumed, however, that knowledge of employers not being particularly interested in bargaining with them put unnecessary strains on the unions in the collective bargaining situation. (In fact employers had clamoured for third party intervention for a very long time.) Unions could therefore have interpreted legitimate suggestions on the part of the employers as a ploy to deceive them. Similarly employers could have done likewise. However, the beginning of this cycle of mistrust must be placed squarely on the shoulders of the employers who expected servility and acquiescence on the part of the native workers.

The disdain the employers held for the workers extended to the black political elite also. Under the old colonial rule, with its crown colony system, members of the business elite were also in the forefront of politics as members nominated by the Crown. They observed their power rapidly diminish and consequently found themselves as political misfits being governed by people they felt did not have the administrative acumen to lead a country.

Economy

Best (1971), Jalee (1968) and Frank (1967) have in different ways

spoken of capitalism and its ability to induce under-development. These are views that one cannot but agree with.

When one looks at the trading pattern of developing countries, one finds that they are predominantly single factor exporters - in most cases depending on that revenue as a means to finance development. This has caused many people in the field of development to advocate radical changes in the economy which would indeed lead to structural transformation. On an international level, which probably is the only way that true physical economic development (as opposed to social and psychological) can be viewed, developing countries can be said to fall within the third world. With respect to this group Jalee stated,

> ...it has been shown that the extractive industries, which produce the major raw materials from the subsoil, are growing rapidly in the Third World, so much so that the gap between the production of the Third World and that of the imperialist countries is definitely narrowing. On the other hand the secondary industries, which produce the equipment and consumer goods so sorely needed in the Third World, are growing only at a modest rate... (Jalee:1968:27)

The problems which developing countries go through when they attempt to open secondary industries are well documented. The economic policy of the developed country is definitely geared towards maintaining the underdeveloped country in a status of dependence. One only has to examine foreign aid to acquaint oneself with the problem.

Notwithstanding such protestations of the perils of foreign exploitation, yet developing countries are faced with a problem of how to effectively change the tastes of people so that a reasonable balance between imports and exports can be upheld. The risk attendant on Governments who fail to grasp the historical moment when drastic changes could be implemented but instead await "development by invitation", is an increasingly restive population. This may be a result of the increasing unemployment, characteristic of such under-development.

In developing countries a feature which usually checks any radical departure from tried-out development models, is the law of rising expectations. Demas (1965:96) says that, "the Caribbean, by reason of its long historical association with the Western world and its close proximity to the North American continent has been overcome - perhaps more than most other areas - by the revolution of rising expectations" Trinidad is no exception to this particular pattern. The people want jobs, a good salary (wage) that they might buy consumer products to satisfy the demand created by the mass media.

In Trinidad, the state of the economy poses severe strains on the industrial relations system. Trinidad being an ex-colonial territory again was exploited for her extractive resources. At first, it was sugar and later it became oil. At one time Trinidad produced 30% of the needs of the British Empire. Trinidad's dependence on

on oil can be seen in that between 1964 and 1968 "the imports of Trinidad by value were $730 million, $816 million, $780 million, $722 million, $838 million respectively. In each of the years mentioned, crude oil accounted for over 50% of the import." (Mulchansingh:1971:87). A similar trend was seen in exports in which oil formed approximately 78% to 80% of the total.

This state has exacerbated the industrial peace which might have been present. What Demas (1965:109) says about the unemployment applies as much to the country's total dependency on oil. Workers in the oil industry have an average income way above the average for other sectors. Consequently when other workers compare themselves with the oil worker, they see the need for larger increases in salary in order to bring some semblance of equity in their pay. It is in this light that one can grasp,

> ...the understandable urge by trade unions to extend to other less productive sectors the wage levels obtaining in the highly productive sectors, which then have neither the incentive nor the means to create jobs. The relatively high wage rates obtainable in the modern sector also convert underemployment or low productivity employment into open unemployment by raising the 'supply price' of labour. This occurs because the expectations of what constitutes a 'reasonable' income are raised and, short of receiving this 'reasonable' income, individuals prefer to remain unemployed rather than engage in low productivity occupations such as peasant agriculture, services, or handicrafts (Demas:1965:111)

To complete the problem cycle, one can therefore expect a

substitution of machinery for man. Employers argue that if wages are going to be high and there is a limit to the productivity one can get from a worker, then substitution of machinery for labour is essential. This does nothing to alleviate unemployment in the country, nor does it deter others from asking for high wages when new industries come into the country.

Another feature of the economy which influence the attitude of unions, is governments concessions to industry in the form of tax holidays. In Trinidad, these holidays extend over a period when the industries have long established their ability to sustain themselves as evidenced by their large profits. Unions are known to argue that if the government will find no feasible way of curtailing these profits, then there is need for the worker through higher wages, to share in this profit. Such attitudes have indeed brought about conflict between Government and unions. Unions have sought to be an active element in the forging of economic policy. This has centered more in the area of advocating the country be more self-sufficient by buying out interests in firms that are foreign owned. Sufrim (1964:22) defends this attitude of unions by explaining that "the union must in some fashion align itself to the activities of the state supporting the plans and programs, attempting to adjust them to the interest of the trade unions, or opposing them... The one policy that the union cannot follow is that of indifference to the dynamics of the society".

At no time have unions seen their position in society as one of passive acceptance of the status-quo. There is no reason to believe that in developing countries, especially in the Western Hemisphere, with their international affiliations to unions that have fought for freedom and social equality, that they are not going to try to be in the fore-front to help shape a national economic policy.

Politics

Because of the pervasive nature of the political system, much that could be discussed under this heading, may have already been mentioned in earlier sections. However the relations that have developed between unions and government have had a strange sequence - at times the government has been accomodating and at other times, otherwise. There does, however, seem to be some relationship between union behaviour and the state of political events in the country.

It was suggested in Chapter 1 that the great number of strikes in 1962 may have been unique and consequently ought to be given less weight as a rationale for the introduction of compulsory arbitration than is usually assumed. Events in the political arena do have a resounding effect in a small and compact political system as obtains in Trinidad. It is one of the disadvantages of a young developing country. Every event seems to affect the people so strongly causing polarization on many issues. Reaction, therefore, can be in the form of passive

acceptance, active acceptance in the form of demonstrations, passive rejection (this can affect different aspects of law and order, productivity, etc.) or active rejection in the form of demonstrations or strikes. The industrial relations system being a microcosm of the larger system, conflict in the larger social system spills over in the industrial relations system.

With this background, when one looks at the figures of 1959 one sees a total of 69 strikes as opposed to 13 strikes for the previous year. In 1958, there were the Federal elections which the predominantly creole ruling party in 1956, the Peoples' National Movement, amalgamating with different parties throughout the West Indies contested. However, this party lost to the predominantly Indian party, the Democratic Labour Party. In accounting for his party's defeat, the Chief Minister (now Prime Minister) referred to a racial voting pattern in the elections. He made some rather intemperate statements about the Indians in Trinidad not being genuine Indians but rather a "recalcitrant minority masquerading as the Indian nation, and prostituting the name of India... (Ryan:1972:192). It is in no way meant to suggest that statements with racial overtones were not made by members of the D.L.P. However, whereas they could have been excused because they were lesser personages, the same reaction was not forthcoming for a person as highly regarded as the Head of State. Although he sought to make amends later, yet it did have an effect

on the people of Trinidad and Tobago. Whether this affected the strike pattern in the sugar industry for the year 1959 is mere specualtion. Suffice it to say, that the sugar industry is predominantly Indian and the workers might have interpreted the speech as a sign of being exploited by two classes - the political elite and the economic elite for whom they worked. They therefore could have construed their plight as one that needed work stoppages as a catharsis.

One legitimate objection to this interpretation may be why such strikes did not take place in the year the statement was made. The feeling is that the contracts probably expired in 1959 giving the union in the sugar industry a legitimate avenue for venting its frustration.

The other year with a large number of disputes, 1962 was the year of independence. The year previous to that the unions marched for the first time in support of the ruling party, the People's National Movement. At that time, they were given a "carte blanche" directive to march "where de hell yuh like". The party the union supported won the election. Coupled with this was the statement from the party's chief that "Massa day done" which interpreted meant, the time for the whites exploiting the blacks was gone.

It is reasonable to assume that the unions thought the government would support their every action. The government had set the rules unions were to operate by - "massa day done". It was this same

attitude that was carried over into independence causing many nationals to question whether the nation had attained that political maturity necessary for making a success of independence.

Several factors already mentioned seem to act together to bring about that chaotic state in 1962. The emancipation of the colonials. labour's alignment with a successful political party for the first time and the legitimacy put to being tough with employers, given by the head of Government all together added to the particular state of labour relations in 1962.

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An analysis of compulsory arbitration has been made. The model used presented the facts concerning the operation of compulsory arbitration. Already conflict is on the increase. However at first the government decided to deal with the situation by making amendments to the original bill. supposedly making it more appealing to unions. However they have since repealed the Act and brought in its place an Industrial Relations Act. Whether this meets with greater success is left to be seen. It can be hypothesized that if it contains qualitatively the same compulsory features as the Industrial Stabilization Act it will meet the same fate.

One actor that has been left out in this analysis is the public. However because of the manipulation which the Government has over the representation of public opinion, it has been very difficult to make many conclusions. Suffice it to say, with the scare tactic of subversive activities and communism, the public was definitely on the side of the government when they introduced compulsory arbitration. This support has become cool due to several factors - among which is the realization that the Act may be rather oppressive.

Compulsory arbitration has certain inherent contradictions. With respect to the mechanical aspect of the arbitration machinery in New Zealand, unions tended to remain weak. In Trinidad, because compulsory arbitration had different environmental factors with which to interact, unions have become stronger. They have been giving a more concerted attack on any industrial measure introduced by the government affecting them.

The organic contradictions have also been discussed. These result from the implementation of compulsory arbitration. The inability of the Court to carry out Section 9 (2) of the Act has also added to the contradictions being solidified. Above all, focus has been placed on the environmental factors which one can safely say made compulsory arbitration an anachronism in Trinidad's situation. This may account for the very short time the legislation was in effect before it had to be repealed. We have pointed out

management's attitude, the state of the unions, the political and economic arena which altogether contributed to a strain in union-management-political relationship.

Because strikes in Trinidad again tended to affect certain industries more than others, two alternatives were available to the government if the situation was thought to warrant compulsory arbitration. Either, the law should have been introduced as a temporary measure, or if it were to remain a little longer, then it should have been applied only to the particular industries involved in the "abnormal" stoppages.

One thing the analysis seems to substantiate, is that having examined the environmental factors which circumscribe the industrial relations system, if ought it can be deduced that most developing countries are akin to Trinidad, there is no reason to believe that compulsory arbitration would succeed in these countries. In fact, the circumstances suggest, that legal borrowing of this type, unless enforced by strict, coercive techniques, would not experience success unless the Government is prepared to risk alienating the total work force and thereby a large percentage of the voters. In the first instance it is believed that the contradictions inherent in compulsory arbitration sets the stage for the demise of the legislation, which may be retarded by the interplay of environmental forces. In the case of Trinidad and Tobago, the environmental factors speeded up the need to repeal this legislation.

CHAPTER VI

CONCLUSIONS AND IMPLICATIONS

In choosing the particular area to research the author has made a committment to the industrial workers. Because of this choice, the author has been less interested in equilibrium but in the plight of a particular class - industrial workers, who seek for several reasons, the major being to improve their status - to form and join unions. Because of the abundance of stress placed on consensus in society, the author focused on a particular voluntary organization, which attests to the presence of conflict.

The author examined the developed countries of Australia and New Zealand and the developing country of Trinidad and Tobago to enquire into the success or failure of compulsory arbitration. In order that the examination may appear to be systematic a model for assessing the effects of compulsory arbitration was designed.

The model had to be one which would enable the author to examine the data of both the developed and developing countries without the charge being levelled that a basis for comparison had not been established. Consequently the study related to aspects of the industrial relations system which were comparable. In both developed and developing countries it appeared that the compulsory

arbitration machinery was not having the predicted success, as seen through the strike statistics. The model was broken down into two areas, mechanistic, which suggested that strike activity can be accounted for by increasing strength of unions and organic, which stated that inherent contradictions would appear in implementing compulsory arbitration which in turn would lead to increase strike activity. Failure was defined as increase in strike activity equal to or above the level of that seen before the introduction of compulsory arbitration.

The logic in the mechanistic aspect of the model, is that if compulsory arbitration can be considered injurious to the labour movement in the long run, then the longer it remains the greater the probability that the unions would realize it is against their interests to support it. However seeing that it is usually introduced when they are weak, assuming that the longer compulsory arbitration remains in force the stronger unions become , then it stands to reason that greater pressure on the industrial relations system will occur.

As previously stated, the model was divided into a mechanistic aspect and an organic. Mechanistic referred to the automatic growth that unions would experience, and therefore the increase in conflict - i.e. strikes - their strength will enable them to pursue. The organic aspect was meant to explain the anomalies which would

arise through implementing the arbitration machinery.

The strength of the unions was seen occurring in the organizational realm. That unions have tended to grow in numbers is incidental to the mechanistic aspect of the model. Compulsory arbitration provides that certain areas of conflict, injurious to the growth in strength of the unions, be resolved by an Industrial Court. Consequently, recognition disputes are ruled out because the Court determines whether or not a union should be recognized. With respect to wages, should the employer refuse to pay the requested wage, the Court has the power to set a wage that it thinks reasonable for the skill.

Recognition strikes are among the most difficult to pursue, seeing that, the union has no legitimacy at the time of the dispute. Many a union has been broken at that organizational stage resulting in great loss to the union and also the members who belonged to the union. With no recognition, funds cannot be deducted as union dues. With no funds, it is usually difficult to carry out a successful strike. With compulsory arbitration, elimination of this occurrence is attempted. Thus the many areas in which the union gets help, gives it a stronger bargaining position with the employer.

The organic aspect of the model was also meant to explain strike activity but did so on the assumption that the difficulties encountered in implementing the legislation would lead to failure of

the Act in curbing strikes. These difficulties are what are referred to as inherent contradictions. The concept of inherent contradictions relate to the claim that the aim of the legislation contradicted reality.

Conflict is inherent to the functioning of society. The strike has its purpose in the industrial relations setting. Any legislation which aims at eliminating conflict and therefore strikes (not that strikes are the only form of conflict) denies reality and consequently will experience great difficulty.

Contradictions also arise when the Act is being implemented. Among these are -

(a) The Industrial Court: Usually in compulsory arbitration legislation, provision is made for an Arbitration Court to which final appeal is made in resolving industrial disputes. However, because conflict cannot be legislated out of existence, the Court must experience great difficulties. As was the case in New Zealand, unions obeyed the dictates of the Court so long as the decisions were in their favour. As soon as the decisions went against them, the unions began striking. Because of their acquired strength, these strikes were successful, which in turn led to more strikes.

Strikes under compulsory arbitration are generically different from those under collective bargaining. With compulsory arbitration strikes are interpreted as strikes against the government, which

they are not ; as against the rule of law which they are somewhat; but hardly against the type of industrial relations system which they are. Consequently Government's reaction to increasing strikes is usually a change in some feature of the Act rather than its abolition.

(b) Sanctions: In all compulsory arbitration laws, sanctions are provided for violations. These sanctions are usually unenforceable. This inability to have violators punished, leads the union to believe that it can definitely have the best of two worlds - when the Court votes in their favour they accept the decision; if the Court votes against them they strike.

In this way, compulsory arbitration fosters a situation where unions strike with impunity.

(c) Economic goals: The Arbitration Court is directed to make its decisions, keeping in mind economic goals of the society. However, in order that its decisions be fair and just, it ought to ignore these economic goals and deal with its cases from an industrial relations perspective. In actuality, the Government is the agency most responsible for carrying out the economic policy of the country. However, the fact that the Court does this, compromises its independence.

The Court is usually required to regulate wages and administer price controls. As stated, in Trinidad a mini fiasco occurred as

a result of this provision in the Act.

Other areas which the author regards as contradictions, have already been discussed in the body of the thesis.

From this examination, there is limited confirmation for the applicability of the mechanistic aspect of the Model. In fact in the case of New Zealand unions remained weak mainly because of the existence of compulsory arbitration. Indeed, what seems to have contributed to the weak state of unions has been the protection unions gained through compulsory unionism. It therefore appears that as long as the legislation does not do everything for the union, the model holds true and strikes continue their upward spiral. This factor has been noticed in New Zealand since the abolition of compulsory unionism. It seems that a plausible explanation would be the growing organizational strength of the unions.

One does see the difference in rate of increase in conflict between Australia and New Zealand. Australia, without any form of compulsory unionism had a sustained increase, whereas New Zealand fluctuated. With the abolition of compulsory unionism, New Zealand followed Australia's pattern.

It is absolutely necessary to recapitulate the surprise of many observers who would never have expected such great industrial conflict in Australia and New Zealand as they are said to have had the conditions which make for "good" industrial relations. The

labour movement has had sufficient time to develop organizational stability because of the length of time it has been in existence. There has also been great stability in the membership. Through the arbitration machinery leadership conflicts in the movement are more or less ruled out. Neither can it be said that communism has had a great impact with respect to disruptions. Management, another important actor in the system, had accepted unions. Consequently unions did not have to go through the process of proving themselves. Unions' interests were also represented by the labour parties in the respective countries. Finally the role of the State was rather involved in these two countries.

Having used Ross and Hartman's (1960) model, the conclusion we arrive at is that there ought to have been very little industrial conflict in both these countries. However, this state is not what was found in Australia and New Zealand. The conclusion left to be drawn is that strength of unions by itself does not ensure intense conflict. Together, they do. Consequently, up to the period that unions were automatically assured of their members, conflict was not intense although the contradictions in the legislation were present. With abolition of compulsory unionism, unions had to fight to justify themselves. They rose to the occassion and hence increasing conflict is being witnessed.

In the case of Trinidad and Tobago, the legislation can be said

to have strengthened the labour movement because unions gained no protection from compulsory arbitration vis a vis membership and also the conditions under which the legislation was introduced in Australia and New Zealand, were different from Trinidad. In Australia and New Zealand unions supported the legislation from the beginning. In Trinidad, a sizable number of unions were against the legislation from the day of its introduction. Consequently, unions saw their role as one of regrouping and then launching a concerted attack on the legislation. There was therefore no time for complacency to develop as with Australia and New Zealand.

Although the unions were gaining substantial benefits, yet they were too contained. This observation brought unions together.

The conditions which favored a pleasant industrial climate in Australia and New Zealand were not present in Trinidad and Tobago. In Trinidad, the unions were disorganized and in this sense one can say that they were weak. However, one cannot say what attack they would have mounted on the I.S.A. were a State of Emergency not declared before introducing the Act. What is suggested, is that fear was the main weapon used to introduce compulsory arbitration in Trinidad. Unions in Trinidad, although hated by employers were strong enough, that strikes were effective in gaining recognition from the employers. Unions have therefore

not relied on the arbitration mechinery as a crutch. This may be the main factor for the increase in strikes to have occurred so quickly after the introduction of compulsory arbitration.

Another factor which may have had some effect on the length of time it took Trinidad to reject arbitration, was the fact that disputes were on the decline when the legislation was introduced. This fact resulted in many persons thinking that its introduction was meant to pacify big business in particular, the oil industry. The decline in strikes indicated that unions were growing in strength and negotiating skills and were consequently winning concessions without resorting to strikes. Indeed, the claim that union strength is related to strike activity is hypothesized only under a system of compulsory arbitration.

Another difference which needs attention in appraising the legislation's failure in Trinidad, is the highly charged political atmosphere in which it was introduced. This may have accounted for the different reactions of the actors in Trinidad and New Zealand and Australia. In the latter countries, unions and the public welcomed the legislation: management did not. In Trinidad, management and the public welcomed the legislation, unions did not. The role of the government was therefore interpreted differently. In New Zealand and Australia, it was seen as the protector of unions whereas in Trinidad, it was regarded as protector of big business.

As was pointed out in previous chapters, there is some difficulty in comparing countries with respect to whether a particular law that has worked in one will work in another. After considering all the data on cross-cultural analyses, the policy maker usually takes a gamble and hopes he is correct with respect to which system should be borrowed from. However, in an area as important as industrial relations, one would hope first of all that gambles would not be taken; and if a gamble is to be taken, then a country with a similar social structure would be the one borrowed from. New Zealand and Australia were not countries whose structure were compatible with that of Trinidad and Tobago to allow legal borrowing to take place.

In 1965 when the Industrial Stabilization Bill was introduced, there was no indicator from the two most experienced countries with compulsory arbitration that the legislation was working, since in both countries strikes were on the increase. In the case of Trinidad and Tobago, because of the inability to enforce the sanctions contingent upon having compulsory arbitration, strikes have also been increasing. Because these strikes can be interpreted as strikes against the government, there is a great possibility that another State of Emergency, similar to the one that preceded the introduction of the Industrial Stabilization Act may be declared.

Force and violence have a place in society. This is demons-

trated by the existence of the Constabulary, Army and other forms of legitimate violence. One facet, which is common to the proper functioning of all these units is the acceptance of their role in society by the people they are supposed to be serving. This analogy is apt for the industrial relations system, moreso as the actors are involved in a voluntary exercise which if stopped can hold the entire society at ransom. Consequently what is needed in the industrial arena is committment on the part of the actors in the system that they are working for the good of society. Such feeling is never aroused through force of law. Law in this respect has the great disadvantage of engendering a certain degree of selfishness because of the fact that the workers can come to believe that they should try to get as much from the Government as they possibly can.

It is a truism that in any society the Government is usually looked on as a benefactor. People believe they can steal from the Government because "it" will not know. People believe they can be non-productive because the Government will not know. Governments in ex-colonial territories are especially susceptible to this attack, as the legacy of colonialism usually leaves a sour aftermath which takes many years to eradicate. One display of dislike for the neo-colonialist is expressed in anti-Government behaviour. Consequently it seems rather ill-conceived that any Government will keep on paper, legislation which it finds difficult

to administer. In a developing country, the politics of ruling the people is interwoven within every fabric of society. Whereas one does not want to link the 1970 disturbances with the presence of the Industrial Stabilization Act, one may very well speculate that the examples of widespread non-enforcement of the statutes in the I.S.A. predisposed many to defy other laws. The more laws there are the more crimes one expects to find. If therefore an increase in crime is going to be the justification for introducing other laws we have arrived at a cyclical spiral with no end in sight.

In this study, it has been shown that compulsory arbitration in the countries examined does not seem to be experiencing the predicted success.

There are several limitations to the study. One may question the use of strike statistics as an indicator of the effectiveness of compulsory arbitration. The author attempted to justify the choice by maintaining that the prohibitive nature of compulsory arbitration dictates that strike could be used as an indicator to show how the machinery is working.

A major limitation in the material presented on Trinidad and Tobago was the inability in getting sufficient data on Trinidad. This may have given greater force to the arguments about the island. However it is still the author's belief that it will not have influenced the outcome of the findings.

The main implications of this enquiry are extremely relevant to developing countries as they are the ones most susceptible to using measures that would result in immediate gains for their populace. Seeing that a buoyant economy is so important to the fulfilling the rising expectations of a people, methods are borrowed from the developed country that would make investors flock to the developing country, create jobs and virtually send the country on its way to successful industrialization.

What is usually forgotten is the class relationship that is engendered by the legacy of colonialism and the type of "industrialization by invitation" that seems to be followed by most if not all developing countries. Consequently, management is not usually sympathetic to unions, government appears to agree with management viewing unions' activities as a deterrent to rapid economic development. The goods produced by these developing countries, because of trade barriers, usually do not bring the development anticipated. Frustration results. The usual reaction of the government is not to regard the plight from an international perspective, but rather to seek ways and means to control labour.

In this light, governments of developing countries must be wary of introducing legislation which aims at immediate peace in society. The developed countries are not experiencing peace. Even if they are, there is a long history of intense conflict behind them.

This study has shown the intense struggle of the labour movement in New Zealand and Australia and how the government reacted by instituting compulsory arbitration. It has been a failure in these two countries. Trinidad and Tobago has recently adopted the said legislation. The strike trend indicates the legislation is also failing. There is need for developed and developing countries intending to adopt industrial relations legislation of these three countries, to think seriously about the inherent contradictions of compulsory arbitration and the environment in which such legislation has to exist. When such an appraisal is done the conclusion may very well be, as this study shows, that a few years of industrial peace which compulsory arbitration assures, are not worth the jeopardy which the entire industrial relations system can be thrown into by such legislation.

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